

STATE OF CALIFORNIA  
THE RECLAMATION BOARD  
REGULAR BOARD MEETING  
OPEN SESSION

RESOURCES BUILDING  
1416 NINTH STREET  
AUDITORIUM  
SACRAMENTO, CALIFORNIA

FRIDAY, OCTOBER 20, 2006

9:10 A.M.

JAMES F. PETERS, CSR, RPR  
CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 10063

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

Mr. Benjamin Carter, President  
Mr. Butch Hodgkins, Vice President  
Ms. Lady Bug Doherty, Secretary  
Ms. RoseMarie Burroughs, Member  
Ms. Teri Rie, Member

STAFF

Mr. Jay Punia, General Manager  
Mr. Stephen Bradley, Chief Engineer  
Ms. Nancy Finch, Legal Counsel  
Mr. Dan Fua, Supervising Engineer  
Mr. Scott Morgan, Legal Counsel  
Ms. Lori Buford, Staff Assistant

DEPARTMENT OF WATER RESOURCES

Ms. Annalena Bronson, Environmental Scientist  
Mr. Tim Kerr, Project Manager  
Ms. Paula Landis, Chief, San Joaquin District  
Mr. Ron Lee, Program Manager  
Mr. Noel Lerner, Senior Engineer  
Mr. Rod Mayer, Acting Chief, Division of Flood Management

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APPEARANCES CONTINUED

DEPARTMENT OF WATER RESOURCES

Mr. Mike Mirmazaheri, Chief, Floodway Protection Section

Mr. Ricardo Pineda, Chief, Floodplain Management Branch

ALSO PRESENT

Mr. Dan Boatwright, Castle Principles

Mr. Paul Brunner, Three Rivers Levee Improvement Authority

Mr. John Carlon, River Partners

Mr. Joe Countryman, MBK Engineers

Mr. Daniel Efseaff, River Partners

Mr. Tom Eres, Hofman Ranch

Mr. Pete Ghelfi, Sacramento Area Flood Control Association

Mr. Reggie Hill, Lower San Joaquin Levee District

Ms. Cyndi Hillery, Assemblyman Doug La Malfa

Mr. Eric Larrabee, Levee District 3

Mr. James Morgan, Butterfield-Riviera East Community Association

Mr. Joe O'Connor, Butterfield-Riviera East Community Association

Mr. Ric Reinhardt, MBK Engineers

Mr. Lloyd Roduner, Lower San Joaquin Levee District

Mr. Scott Shapiro, Three Rivers Levee Improvement Authority

Mr. Jeff Sutton, Family Water Alliance

Mr. Aaron Ward, Yuba County Officer of Emergency Services

Mr. Tim Washburn, Sacramento Area Flood Control Association

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1 PROCEEDINGS

2 PRESIDENT CARTER: Okay. Good morning, ladies  
3 and gentlemen. Welcome to the monthly meeting of the  
4 State Reclamation Board.

5 If we could have our General Manager call the  
6 roll.

7 GENERAL MANAGER PUNIA: Jay Punia. For the  
8 record, except Board Member Teri Rie, the rest of the  
9 members are present at this time.

10 PRESIDENT CARTER: Thank you very much.

11 At this time we'll -- Item 2 is to go in to  
12 closed session and discuss litigation, specifically  
13 Natural Resources Defense Council versus the Reclamation  
14 Board, Case No. 06CS01228. And this closed session is  
15 pursuant to the Government Code Section 11126(e)(2)(A).

16 (Thereupon the meeting recessed in to  
17 closed session at 9:11 a.m.)

18 (Thereupon the meeting reconvened in to  
19 open session at 9:48 a.m.)

20 PRESIDENT CARTER: Good morning, ladies and  
21 gentlemen. Well, I welcome you to the meeting of the  
22 State Reclamation Board.

23 As indicated on the agenda, the Board conducted a  
24 closed session regarding the litigation this morning  
25 starting at 9 o'clock. We have adjourned from that closed

1 session and are back in open session. There were no  
2 decisions made. It was a briefing by our legal counsel  
3 with regard to litigation.

4 So with that, we'll resume our agenda on Item 3,  
5 Approval of the Minutes for June 16th, 26th and July 21st.  
6 There were no minutes submitted for approval for September  
7 15th that's indicated in the agenda.

8 So at this point we'll entertain a motion to  
9 approve the minutes of those three meetings.

10 SECRETARY DOHERTY: I'd like to make a motion  
11 that we approve the minutes for those three meetings with  
12 the exception of June 26th. It should be signed by Ms.  
13 Rie as Secretary.

14 PRESIDENT CARTER: Does the matter of the  
15 signature --

16 SECRETARY DOHERTY: Well, it reflects that I was  
17 Secretary at that time, and I was not.

18 PRESIDENT CARTER: Okay. But does that mean that  
19 the Board can't -- just because of the signature the Board  
20 can't approve --

21 SECRETARY DOHERTY: Oh, no. Can't we change  
22 that?

23 PRESIDENT CARTER: Yes, we can amend those.

24 SECRETARY DOHERTY: Amend it to read "Teri Rie".

25 PRESIDENT CARTER: Okay. So amend the June 26th

1 minutes to reflect Member Rie as Secretary of the Board at  
2 that time.

3 Okay. So we have a motion on the table.

4 Is there a second?

5 VICE PRESIDENT HODGKINS: I'll second.

6 PRESIDENT CARTER: Okay. We have a second.

7 Any discussion?

8 All those in favor indicate by saying aye.

9 (Ayes.)

10 PRESIDENT CARTER: And opposed?

11 None.

12 Motion carries.

13 Thank you.

14 Next we have Approval of the Agenda, Item 4.

15 At this point we will -- are there any changes to  
16 the published agenda proposed by Board or staff?

17 GENERAL MANAGER PUNIA: The staff is going to  
18 recommend that we remove item 14B from the agenda. And  
19 Scott will elaborate what the reasoning is.

20 Scott.

21 STAFF COUNSEL MORGAN: Okay. Well, before we get  
22 into a discussion of that, I'd like to suggest a less  
23 controversial change to 10. The language suggested to the  
24 Board would be considering selecting a preferred  
25 alternative. And that's not really what the staff would



1 be asking the Board to do at this time. It's really on  
2 the agenda as an action item to give the Board an  
3 opportunity to provide staff with any policy guidance on  
4 the project. The EIR is coming before the Board next  
5 month for selecting a preferred alternative. So that  
6 would be the first suggestion, to change that.

7           With regard to 14B, this is Three Rivers Levee  
8 Improvement Authority's request to raise the levee crown  
9 elevation on their levee. This has unfortunately not been  
10 something that the staff has been able to review  
11 technically to determine whether or not there's impacts.  
12 So there would be no staff recommendation on the  
13 engineering effects of this.

14           And there are potentially legal issues related to  
15 changing the hydraulics of the system, a plan of flood  
16 control. And we certainly can't evaluate the legal  
17 impacts without knowing the engineering, the hydrologic  
18 impacts. So that's why we would recommend it be taken off  
19 the agenda.

20           PRESIDENT CARTER: Okay.

21           GENERAL MANAGER PUNIA: Item 15 -- 16, the  
22 informational item, Paula Landis has requested that if we  
23 can hear her item before item -- Rod's Item No. 15. So  
24 it's her personal request. She has to drive back to  
25 Fresno, so she's requesting that if that item can be heard

1 before Item 15.

2 PRESIDENT CARTER: I got a thumbs up from Mr.  
3 Mayer. So I'm sure we can accommodate that.

4 GENERAL MANAGER PUNIA: That's it.

5 PRESIDENT CARTER: Okay. So the suggestions that  
6 we have for the agenda are to change the wording on item  
7 10 to provide staff with any policy guidance on the  
8 project and EIR process.

9 STAFF COUNSEL MORGAN: For 10? Yes, to -- for  
10 the Board to give staff any policy guidance on the  
11 project.

12 PRESIDENT CARTER: On the project. Okay.

13 Remove Item 14B primarily because we have not  
14 done the analysis with regard to what the impacts, both  
15 legal and technical impacts, are of the request.

16 And, finally, move Item 16 to be heard before  
17 Item 15.

18 Any discussion?

19 SECRETARY DOHERTY: I'll move that we accept the  
20 agenda with the changes indicated.

21 PRESIDENT CARTER: Okay.

22 BOARD MEMBER BURROUGHS: I'll second that.

23 PRESIDENT CARTER: A motion and a second.

24 Any discussion on that?

25 Okay. All those in favor indicate by saying aye.

1 (Ayes.)

2 STAFF COUNSEL MORGAN: Wait. If I could get you  
3 to wait for just a second. I think there are -- the  
4 public would like to make some comments on this.

5 PRESIDENT CARTER: I'm sorry.

6 Okay. Please, Mr. Reinhardt.

7 MR. REINHARDT: Ric Reinhardt, Program Manager  
8 for Three Rivers Levee Improvement Authority.

9 We understand that staff has not had a chance to  
10 look at this. But we would like Item 14B to be heard  
11 today. It is a time critical issue. We are in  
12 construction. The levee's in the process of being raised.  
13 And if the Rec Board does not make a decision today, by  
14 default the decision will be to deny the request. And so  
15 we'd like an opportunity to present to the Board the  
16 issues and then possibly take action based on future staff  
17 review; or if the Board concurs with our analysis, then  
18 approve the requested action.

19 PRESIDENT CARTER: Okay. Any questions of Mr.  
20 Reinhardt?

21 Okay. Very good.

22 Any other comments, questions on the agenda?

23 So we do have a motion to approve the agenda with  
24 the suggested changes to Item 10, removal of Item 14B and  
25 swapping Item 16 to come before Item 15.

1 SECRETARY DOHERTY: So you will reinstate Item  
2 14B?

3 PRESIDENT CARTER: Well, that's the motion that  
4 we have on the table right now, and it's seconded.

5 SECRETARY DOHERTY: No, the motion was to remove  
6 14B. So we need a new motion to -- or do we need to  
7 restate it?

8 PRESIDENT CARTER: Perhaps I misspoke.

9 The motion is to -- provides on Item 10 -- change  
10 the wording on Item 10 to provide staff with any policy  
11 guidance on the project, to remove Item 14B and to hear  
12 Item 16 before Item 15. And that's the motion we have  
13 before us with the second.

14 Any discussion?

15 VICE PRESIDENT HODGKINS: You are removing 14B?

16 PRESIDENT CARTER: That's the motion.

17 Okay?

18 SECRETARY DOHERTY: Excuse me. Did we not just  
19 vote on?

20 PRESIDENT CARTER: No.

21 SECRETARY DOHERTY: And then a member of the  
22 audience, Mr. Reinhardt, came up to the podium?

23 STAFF COUNSEL MORGAN: Well, it was my intent to  
24 stop the voting in progress so that the public could make  
25 comments before the Board took action. I was hopeful that

1 I had been successful in that effort.

2 PRESIDENT CARTER: It was my understanding that  
3 you were successful.

4 SECRETARY DOHERTY: Okay. So then we're  
5 reinstating -- so we're not removing 14B?

6 PRESIDENT CARTER: No, no. Your motion as you  
7 made it, Lady Bug, is still --

8 SECRETARY DOHERTY: Now we have to vote it down.

9 PRESIDENT CARTER: Well, you can vote whatever  
10 you want. But the vote remains. Then the motion before  
11 you is, as I've stated, changing the language to Item 10  
12 to provide staff policy guidance on the project, removing  
13 14B from the agenda to not be heard today, and hearing  
14 Item 16 before Item 15.

15 Everybody clear on that?

16 Okay. Any further discussion? Any questions?

17 SECRETARY DOHERTY: I have a question.

18 It is your recommendation -- legal recommendation  
19 that we not hear 14B today; is that correct?

20 STAFF COUNSEL MORGAN: That's correct, because  
21 there's not going to be a staff recommendation; and I will  
22 not be able to provide any legal guidance on any possible  
23 consequences of what the effects of the project might be  
24 based on staff recommendation because the staff doesn't  
25 have a recommendation.

1           So I think it's a dangerous thing to take action  
2 without any guidance from staff whatsoever.

3           SECRETARY DOHERTY:   Okay.   Thank you.

4           PRESIDENT CARTER:   Any other questions?

5           Okay.   Then we will have a vote.

6           All those in favor of the --

7           VICE PRESIDENT HODGKINS:   I need to ask a  
8 question.

9           Do we have to amend this agenda now?   Can we deal  
10 with 14B when it comes up so that there's a chance for  
11 some more discussion here?   I mean I think we're -- I'd  
12 like to understand the ramifications here of not granting  
13 this in terms of Mr. Reinhardt's statement that is in  
14 effect a denial.   And that's part of the item.

15           PRESIDENT CARTER:   One way we could go, if I can  
16 maybe facilitate this, is we could vote down the motion  
17 and then make a new motion to keep it on.   We can hear the  
18 discussion.   We cannot make a decision or -- we can do  
19 whatever we want when the item comes up.   But we can hear  
20 the discussion.   And the Board can do whatever it wants as  
21 far as that's concerned.   But I remind you, the motion  
22 before you right now is one that removes Item 14B from the  
23 agenda.

24           So all those in favor indicate by saying aye.

25           And those opposed to the motion?

1 (Ayes.)

2 PRESIDENT CARTER: Okay. The motion fails.

3 Do we have a new motion?

4 VICE PRESIDENT HODGKINS: I move we alter Item

5 10, change the order on item 15 and 16. And I think

6 that's it. Is there a --

7 PRESIDENT CARTER: No.

8 BOARD MEMBER BURROUGHS: No, that's not correct.

9 You said remove 10. That's just a change.

10 PRESIDENT CARTER: No, he said amend. He said

11 amend the language on Item 10.

12 So that Butch's motion right now, as I

13 understand -- let me restate it, and correct me -- is to

14 change the language on Item 10, as we've discussed before,

15 to provide the staff with any policy guidance on the

16 project; and to hear Item 16 prior to Item 15. Two

17 changes to the agenda.

18 BOARD MEMBER BURROUGHS: I'll second that.

19 PRESIDENT CARTER: Okay. We have a motion and a

20 second.

21 Any discussion?

22 All those in favor indicate by saying aye.

23 (Ayes.)

24 PRESIDENT CARTER: And opposed?

25 The motion carries.

1           Okay.  So we have an agenda.

2           Thank goodness.

3           (Laughter.)

4           PRESIDENT CARTER:  At this point, ladies and  
5 gentlemen, we have time allocated for public comment.

6 This is time where any member of the public can come and  
7 address the Board.  We welcome your comments.

8           These are -- this is a time when you can provide  
9 comment on items that are not agendized for today.  You  
10 will have your chance to talk on agendized items.

11           What we do ask though is that you please -- there  
12 are cards in the back table and also available from Lori  
13 Buford.  And please fill these out so that we know that  
14 you want to be recognized.  If we don't have these, it's  
15 very difficult for us.

16           The other request is that if you would please --  
17 we've got a very full agenda today -- try and limit your  
18 comments to five minutes.  And we will be watching the  
19 clock.

20           So at this time I do have one card from Mr. Eres  
21 for general public comment.

22           MR. ERES:  Good morning, President Carter,  
23 members of the Board.  My name is Tom Eres.  I'm general  
24 counsel for Hoffman Ranch.  It's located up in southern  
25 Yuba County, just north of Plumas Arboga Road.  It's



1 western boundary would the Western Pacific Interceptor  
2 Canal, 40-mile road on the right -- or on the east, if you  
3 will. And it's just south of Beach Creek and Hutchinson's  
4 Creek.

5           The concern I wanted to express this morning is  
6 that we are trying to track what's going on with respect  
7 to Three Rivers Levee Improvement Authority, the  
8 improvements that they're making, the nature of the  
9 improvements that they're making, and the implication of  
10 the improvements that they're making as specifically  
11 related to the new FEMA maps that are being circulated for  
12 discussion and at workshops in and around Yuba County.

13           This Board has not, to my knowledge, acknowledged  
14 really the draft report dealing with the FEMA maps and  
15 flood issues in southern Yuba County, which I believe came  
16 out the early part of August. I didn't notice it on the  
17 agenda in September, but I thought they were still pretty  
18 early. We were still looking at them.

19           We are confused, quite frankly, as to what the  
20 criteria is that FEMA has been using to change the maps  
21 from what they were previously to what they are proposing  
22 today. My client was informed yesterday from a FEMA  
23 representative that part of the implications on her  
24 property is the result of Three Rivers Levee Improvement  
25 Authority work, which I did not understand was a

1 modification to the Western Pacific Interceptor Canal,  
2 that is, that it was basically a strengthening in place.

3           If the cross-sections have been changed, the  
4 levee has been raised, the crown has been widened, the  
5 slopes have changed or the bottom part of the levee has  
6 changed such that FEMA has now been reviewing what the  
7 implications of that would be with respect to flood  
8 protection, I think it's something that the Reclamation  
9 Board should get thoroughly engaged with, get a briefing  
10 from FEMA. And the public needs to know what that  
11 criteria is and what the Reclamation Board may choose to  
12 do in exercising its broad authority and its initiative  
13 here with respect to trying to integrate, for those of us  
14 trying to follow, what the Corps of Engineers is doing,  
15 what Three Rivers is doing, what the Department of Water  
16 Resources is doing, what the Reclamation Board is doing  
17 with respect to the flood system that is located up in  
18 southern Yuba County.

19           So basically what I'm urging the Board to do is  
20 to integrate or get some sort of a briefing from FEMA.  
21 And before you make too many decisions here on potentially  
22 changing levees in any form or other, we need to make sure  
23 that we have the big picture.

24           I'll probably be addressing the Three Rivers  
25 issues later on. But I would note, those of us in the

1 public have a heck of a time trying to follow what is  
2 going on up there where everything is hair-on-fire exigent  
3 circumstances. We don't have a report for the public to  
4 look at yet. But if we don't do this thing today, then,  
5 heaven forbid, we all better start building arks. So the  
6 bottom line here is the public does need to have an  
7 opportunity to review these documents so that we can if we  
8 choose make some meaningful comment.

9 I hope I didn't exceed my five minutes. And  
10 thank you.

11 PRESIDENT CARTER: Thank you.

12 Staff, make a note of that.

13 GENERAL MANAGER PUNIA: Yes.

14 PRESIDENT CARTER: And Ricardo Pineda just walked  
15 in. He's the DWR lead on some of the FEMA flood mapping.

16 I don't know, Ricardo, if you have any comments  
17 with regard to the comments that Mr. Eres made.

18 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: Well,  
19 I certainly can address some of the comments, President  
20 Carter.

21 In regards to providing information about the  
22 floodplain mapping study in Yuba County, we just  
23 completed, the Federal Emergency Management Agency  
24 together with Yuba County and the Department of Water  
25 Resources, three public workshops here in the month of

1 October, one in Marysville, one in the community of Linda,  
2 and one last Tuesday in the community of Plumas Lakes,  
3 where we explained the status of the study, why we were  
4 having the meetings, and the status of the Three Rivers  
5 Levee Improvement Authority's project, Yuba County's  
6 multi-hazard planning activities, and Yuba County Water  
7 Agency's activities. We can -- at the next meeting I can  
8 give you a status report. And I can kind of summarize  
9 where we're at right now if you'd like me to spend, say,  
10 four minutes on that subject of the mapping studies  
11 themselves.

12 PRESIDENT CARTER: Is that worthwhile?

13 SECRETARY DOHERTY: Um-hmm.

14 PRESIDENT CARTER: Please.

15 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: Okay.

16 As you are aware based upon previous briefings, the  
17 Department of Water Resources, pursuant to a directive  
18 from the Federal Energy Regulatory Commission, as part of  
19 the Oroville reservoir and hydroelectric power complex,  
20 conducted a hydraulic study on the Feather River starting  
21 in 2000. It's taken us awhile to get it broken up into  
22 two parts, the Upper Feather River Study and the Lower  
23 Feather River Study.

24 And when we did these studies to FEMA standards,  
25 we contracted with the Corps of Engineers. We updated the

1 hydrology. The Corps did some additional storm centerings  
2 and found freeboard issues on the Feather River in  
3 Reclamation District 1001, along with Bear River in Sutter  
4 and Yuba counties, and along the Western Pacific  
5 Interceptor Canal. They also, utilizing their  
6 underseepage criteria and more recent knowledge on how to  
7 look at foundation stability issues, went through the FEMA  
8 checklist of erosion, levee height, levee stability,  
9 operations and maintenance, closure structures, levee  
10 stability and foundation stability, and determined based  
11 upon the data that they had on hand that levee reaches in  
12 Sutter and Yuba County along the Feather River, the Bear  
13 River and the Western Pacific Interceptor Canal and the  
14 left bank Yuba River do not meet FEMA certification and,  
15 thus, the Corps of Engineers could not certify them as  
16 part of the study.

17           So as part of the hydraulic analysis the Corps  
18 broke the levee at identified problem areas, ran the  
19 models and drew the respective floodplains. We put that  
20 all together in a study to FEMA standards, submitted it to  
21 FEMA for processing. And we've been in essentially a  
22 processing mode for close to two years.

23           And the point that -- the step that we're in  
24 right now is the 90-day community review, in which within  
25 these 90 days the communities are obligated -- which is

1 Sutter County, Yuba City, and Yuba County -- have the  
2 opportunity to submit appeals to FEMA.

3           And so the maps have been published -- the  
4 preliminary maps have been published. They are not  
5 effective until FEMA receives any appeals and then  
6 responds to those appeals. And the appeals have -- FEMA's  
7 made the point at the workshops that they have to be based  
8 on science and engineer. They can't just be "I don't like  
9 the map."

10           The prime issue that was raised in Yuba County --  
11 and Mr. Mayer may address this a little bit further -- was  
12 that if these maps become effective in the near future, it  
13 has the potential in the Yuba County area south of the  
14 Yuba River -- that's RD 784, includes the Plumas Lakes --  
15 to -- if they're implemented, it will require the  
16 community officials to require all new structures to be  
17 elevated to at least the base -- or above the base flood  
18 elevation. As we're aware, that area, if the levee fails,  
19 it's a deep floodplain and, thus, the structures would  
20 have to be elevated to a significant level, which could be  
21 interpreted as preventing any new development from  
22 occurring. And since the development is helping fund the  
23 levee improvements that DWR is also helping fund Three  
24 Rivers Levee Improvement Agency implement to provide a  
25 high level of flood protection, that the financing

1 structure could get to a point that there's no longer  
2 funds to continue making the levee improvements.

3           And so that was an issue that was raised. And I  
4 responded to that question at the meetings and indicated  
5 that, you know, we started this process as part of the  
6 FERC process, and we're trying to as part of our public  
7 safety program within the flood management update -- it's  
8 critical to appropriately identify the flood hazards  
9 throughout the valley and update the flood insurance rate  
10 maps. So we're partnering with FEMA on that, partnering  
11 with the Corps of Engineers, and trying to work with  
12 communities. It just happened to be that because of the  
13 FERC requirements during the terrible budget times at DWR,  
14 those were the first studies that we did with funding from  
15 the Division of Operations and Maintenance, some funding  
16 from the Corps and funding from the Department of Water  
17 Resources.

18           At the same time, we believe these communities  
19 need a high level of flood protection, and we've been  
20 working with Three Rivers and Yuba County Water Agency and  
21 Yuba County and Sutter County to direct Proposition 13  
22 funds to those areas. And in Three Rivers -- or in the  
23 Yuba County area, we have been successful to actually get  
24 the work on the ground, and that work is continuing.

25           So that's essentially the status. I expect, and

1 they have made public statements, that Yuba County  
2 officials through Three Rivers will be submitting appeals  
3 to FEMA. And Mr. Reinhardt consulted with Three Rivers,  
4 has indicated that the south levee of the Yuba River will  
5 be certified by the Corps of Engineers some time in  
6 November-December of this year. And then potentially --  
7 FEMA has to react to those changes, since we have -- part  
8 of the floodplain is based upon the Yuba River left bank  
9 south levee not being certified. So resolving those  
10 appeals could make a while, and I cannot tell you at this  
11 point when the effective -- meaning the regulatory map  
12 from Yuba County will become effective.

13 In Sutter County there isn't construction on the  
14 ground at this point. But they also have indicated to me  
15 that they will be appealing technical elements of the  
16 study. So I can't tell you when that map will be become  
17 more effective. But appeals will be filed in both  
18 counties.

19 So that's essentially the status. We are also  
20 working on the Upper Feather River Study and looking at  
21 levee integrity issues there. And the Corps has  
22 identified that there's historical problem areas along the  
23 Feather River that they will be addressing in the  
24 hydraulic analysis for those resultant floodplains.

25 And of course we have a much bigger mapping



1 program that we're trying to launch for the Central Valley  
2 using AB 142 funds that will look at all areas protected  
3 by project levees in the Central Valley in trying to  
4 update those maps, first -- hopefully first focusing on  
5 urban areas. But it's a multi-step process that involves  
6 a lot of consultants and a lot of data acquisition. And  
7 we could also present a -- make a presentation on the  
8 Department's floodplain mapping program for the Central  
9 Valley at a later meeting as details get fleshed out.

10 PRESIDENT CARTER: Thank you, Ricardo.

11 This clearly is it a very, very large issue. It  
12 probably makes sense for us to try and agendize a  
13 presentation with Ricardo, perhaps representatives from  
14 FEMA.

15 Would November be too early?

16 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: I  
17 would recommend for your consideration, President Carter,  
18 that the overall mapping plan, maybe we could do it a  
19 little bit later. We're still trying to work out some  
20 details, and of course anxiously awaiting for the results  
21 of the upcoming election whether we'll be getting  
22 additional funds through some of the ballot measures. So  
23 our plan may change.

24 What I have recommended to General Manager Punia  
25 is that perhaps in November I can make a presentation if

1 the Board desires on some new changes that the Corps and  
2 FEMA has in relationship to Procedure Memo 43. You  
3 probably recall discussions -- Procedure Memo 34 that says  
4 you have to submit all the certification documents for  
5 your levees related to FEMA's map modernization process.  
6 And we had a workshop here -- two workshops on September  
7 22nd, to overflow capacities, to discuss those issues with  
8 stakeholders throughout California. And a couple days  
9 after that meeting, FEMA released Procedure Memo 43, which  
10 updates information about Procedure Memo 34. So that one  
11 may be a little bit more timely to discuss at the November  
12 meeting. And then maybe in December or January we'll give  
13 you an update on the state's mapping plan for the Central  
14 Valley.

15 That would be my recommendation to you and to the  
16 Board members.

17 PRESIDENT CARTER: Okay. So we'll have staff get  
18 with you, Ricardo, and work out a reasonable schedule and  
19 propose the agenda topics for both November and in the  
20 future.

21 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: And  
22 I'll be here throughout the first half of the meeting to  
23 answer any questions during the Three Rivers and the  
24 mapping process at any point during the day.

25 PRESIDENT CARTER: Thank you.

1 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

2 You're welcome, sir.

3 VICE PRESIDENT HODGKINS: Could I ask Ricardo one  
4 question, maybe two.

5 Ricardo, the maps that are now out as drafts,  
6 they reflect in essence the conditions that existed, as  
7 far as FEMA knows, based on the DWR and Corps floodplain  
8 mapping study, that existed prior to the construction of  
9 the Three Rivers project; is that correct?

10 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: That  
11 is correct. None of the levees in the Three Rivers area,  
12 WPIC, Yuba River, Feather River, Bear River -- that work  
13 has not been newly certified by the Corps of Engineers.  
14 From the best that we can tell, Mr. Hodgkins, those levees  
15 were kind of grandfathered by the Corps, by the USGS, into  
16 the FEMA maps before, but they never really went through  
17 the formal certification. The levee standards came out in  
18 '86 with FEMA. And then of course the Corps has the  
19 underseepage standards that came out in 2002 or something  
20 of that nature.

21 So the levee -- the maps reflect those levees not  
22 having enough freeboard, which is one of the checklists,  
23 there were some erosion problems, and there were some  
24 underseepage problems, and probably some other issues that  
25 I can't recall at this point. So the Corps did levee

1 breaks -- as part of the floodplain mapping they did levee  
2 breaks on those and drew the resultant floodplains. As  
3 Three Rivers Levee Improvement Authority completes --  
4 completely completes construction on certain areas and  
5 gets to at least the 100-year level, which Mr. Reinhardt  
6 has indicated they will be reaching in November, then --  
7 and if the Corps certifies or the community chooses to  
8 submit certification directly to FEMA that they've met all  
9 the criteria and provided all the engineering backup, then  
10 that condition is changed for at least the Yuba River left  
11 bank levee. And then it's not unreasonable to think that  
12 if you're about to publish a map that assumes a levee  
13 break because the levee's not certified, and now it's  
14 formally certified by the Corps of Engineers to be the  
15 fastest way, then that map may need to be changed. And we  
16 anticipated this type of situation.

17           So the basic answer to your question, the Corps  
18 study -- since the levees weren't certified, the Corps  
19 identified freeboard and the geotechnical and erosion  
20 issues, levees in each of those reaches were breached  
21 using hydraulic models, the floodplains they're on.

22           VICE PRESIDENT HODGKINS: But fundamentally the  
23 maps are not the result of, or for that matter -- they are  
24 not the result of anything done by the Three Rivers  
25 project; those were the conditions that existed before the

1 project was undertaken?

2 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

3 Right. The work of Three Rivers isn't credited on the  
4 maps until it reaches the 100-year level. It is certified  
5 and then accredited by FEMA. The community certifies --  
6 that means submits all documentation that says -- an  
7 engineer says it meets all criteria. Then FEMA reviews it  
8 and does the accreditation.

9 In the past FEMA maybe -- at least it's my  
10 impression that they kind of accepted everything. Now  
11 they're doing a much more detailed review. But if the  
12 Corps does it, then it's -- some people think it's pretty  
13 automatic if the Corps says -- and it's within the FEMA  
14 regs -- to have another federal agency certify the levees,  
15 then it's pretty much automatic that FEMA will accept it.  
16 But there seems to be a much more, as we're quite aware  
17 of, higher interest by FEMA in levees, and they probably  
18 will review the Corps's certification, as they have  
19 reviewed in great detail, technical detail the Corps's  
20 hydraulic analysis as part of the mapping process.

21 PRESIDENT CARTER: So can we -- we'll ask staff  
22 to work with you then, Ricardo, and try and keep the Board  
23 apprised of the changing situation.

24 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

25 Right. And as part of these mapping studies we are

1 working with the communities and having, you know, a fair  
2 amount of public discussions with the officials and  
3 potentially community meetings when we're at an  
4 appropriate point. So we have our own public outreach  
5 process.

6 PRESIDENT CARTER: Good.

7 Mr. Reinhardt, you wanted to address the Board?

8 MR. REINHARDT: Ric Reinhardt, Program Manager,  
9 Three Rivers. Thank you, President Carter.

10 I just wanted to add to what Mr. Pineda said, in  
11 that the improvements that have been made to date do not  
12 reflect -- are not reflected on FEMA maps, and specific to  
13 the areas east of the Western Pacific Interceptor Canal,  
14 Ms. Hoffman's property specifically. These FEMA maps  
15 significantly increase the area in the 100-year  
16 floodplain.

17 Our project when accredited will reduce the  
18 floodplain on those properties because of the stage  
19 reductions associated with the Bear River setback levee.  
20 So I just wanted to be clearly on record as stating that  
21 our project will have a beneficial impact to the  
22 floodplain mapping with the properties east of the Western  
23 Pacific Interceptor Canal.

24 PRESIDENT CARTER: Thank you.

25 Okay. Seeing no other public comment, we will

1 move on to Item 6, Report of the Activities of the  
2 Department of Water Resources.

3 Mr. Mayer.

4 DIVISION OF FLOOD MANAGEMENT ACTING CHIEF MAYER:

5 Good morning, president Carter, members of the  
6 Board, General Manager Punia.

7 I intend to be very brief this morning. Actually  
8 Ricardo stole a lot of my thunder regarding the mapping  
9 studies. I will have a couple comments on those.

10 First I'd like to begin with water conditions.

11 The only comments I'd like to make on water  
12 conditions are that, as we're entering the flood season,  
13 reservoirs are fairly full due to the heavy precipitation  
14 we had this spring and winter. And we are also developing  
15 a mild El Nio, which doesn't mean a lot for northern  
16 California one way or another, but the historic trend is  
17 that for southern California we could expect a chance of  
18 heavier than average precipitation.

19 We are having discussions with southern  
20 California flood control interests about the state of  
21 preparedness for flood issues that could be expected in  
22 that area.

23 And of course, in addition, we will be briefing  
24 you next month at the Board meeting, as we do each  
25 November, on the state of preparedness for the flood

1 season for our Central Valley Flood Control System.

2           With respect to the lower Feather mapping, I  
3 provided you a write-up. Ricardo went into much more  
4 detail in the write-up. And the only comment I would like  
5 to add to what Ricardo said is that one of the key issues,  
6 that has actually delayed the study somewhat of a firm map  
7 that FEMA has issued on a preliminary basis at this point,  
8 is how we handle levee breaks.

9           FEMA was not entirely satisfied with the way that  
10 the Corps of Engineers selected various locations to break  
11 the levees and develop floodplains. And the FEMA  
12 procedure is to remove the levee or remove large reaches  
13 of levee, rather than distinct levee breaks. And it's  
14 really distinct levee breaks that we actually see  
15 occurring in nature. And so that's the argument that we  
16 have used, that what we're doing is actually more  
17 realistic.

18           So as a result of that difference in the way that  
19 levee breaks are modeled, FEMA has decided to not issue  
20 its preliminary flood insurance rate maps as detailed  
21 maps. So you don't see elevation information in the  
22 floodplain on the maps, even though the study that we  
23 prepared and the Corps prepared and submitted does show  
24 detailed information regarding the base flood elevation  
25 for the floodplains. That makes it somewhat cumbersome



1 for local communities to actually administer the maps when  
2 they don't have detailed elevation information and what  
3 information to provide folks living in a floodplain and  
4 develop -- wish to develop in a floodplain with respect to  
5 flood depths and elevations.

6           The good news is, even if they do issue an  
7 approximate map, as FEMA is on track to do now, that we do  
8 have the study that we prepared and the community has  
9 available, and they can refer to that for detailed flood  
10 elevation information for the floodplains.

11           In learning from that experience, we are now  
12 working with FEMA closely to develop protocols for how we  
13 approach levee breaks in the future, in particular for the  
14 Upper Feather Floodplain Mapping Study. And hopefully we  
15 will be able to reach an agreement on the sizes of levee  
16 breaks and how closely spaced they need to be along the  
17 levees as one marches down the levees, removing them,  
18 developing a floodplain, putting the levee back, moving  
19 down the levee, removing it and doing the same thing. And  
20 if we can reach a protocol, then hopefully the upper  
21 Feather study, when it's completed in the spring, will  
22 have detailed information that meets FEMA's requirements,  
23 and FEMA could then issue detailed firm maps rather than  
24 approximate firm maps.

25           The only other topic I wanted to cover is the

1 status of critical erosion repairs. For the future sites  
2 that are not -- that were not being done already as part  
3 of the initial 24 sites. It has grown to 33.

4 Ron Lee with the Division of Engineering will  
5 follow me and he will brief you on the status of these 33  
6 critical sites and the repair program, which is kind of  
7 wrapping up at this point.

8 But at the same time, a new program is emerging,  
9 that you've been briefed on, that involves a total of 71  
10 critical sites on top of those 33. The numbers change  
11 around a little bit each time I talk to you. And I'm  
12 probably giving you slightly different numbers. And it's  
13 been a challenge to sort through the numbers between the  
14 various programs and authorities and to eliminate  
15 duplication that occurs and to get the classifications  
16 right in terms of the severity of the damage.

17 But at this point the number that we have before  
18 us is 71 new sites, of which 47 of them qualify for PL  
19 84-99 rehabilitation assistance and 24 are under the Ayres  
20 program, which then falls under the Sacramento River Bank  
21 Protection Project Authority.

22 In September, the state paid the Corps \$13.264  
23 million to fund the initial PL 84-99 repairs on 11 Order 1  
24 sites. In PL 84-99 lingo, Order 1 sites are the most  
25 severe damaged sites the qualify for PL 84-99, and they

1 protect an urban area. Those were our first priority. So  
2 11 of those sites are now underway for the Corps to do the  
3 repairs. Actual construction is just starting on one of  
4 the sites at this point. The construction on those will  
5 continue well into December.

6           The Corps has also recently agreed to take on  
7 another eight Order 1 sites -- and these are in  
8 Reclamation District 3, Grand Island in the Delta -- and  
9 seven Order 2 sites. The Order 2 sites are sites that are  
10 equally severely damaged, but they don't protect urban  
11 areas; they protect rural areas.

12           So all told, we're looking at 26 Order 1 and  
13 Order 2 sites that the Corps of Engineers intends to  
14 repair. And they will do this through contracts between  
15 the Reclamation Board and the Corps of Engineers. One  
16 such contract has been executed that allowed that \$13  
17 million payment. That contract will be amended in the  
18 near future to add the Grand Island sites. And there will  
19 be another contract developed to cover the Order 2 sites,  
20 several of which are in the San Joaquin Valley.

21           In addition to that, the state is entering a  
22 contract with Brannan-Andrus Levee Maintenance District  
23 that would fund that district to do 13 sites that are  
24 Order 1 sites, which are beyond the Corps's capacity to  
25 handle at this time. And Brannan-Andrus Levee Maintenance

1 District has said that it is capable of accomplishing the  
2 work. Of course the work will continue well into the  
3 winter.

4 Also, DWR has already repaired several sites on  
5 DWR-maintained levees. Some of the sites are already  
6 done. I think there's one that's still underway in  
7 Maintenance Area 5.

8 And then there are several other sites down in  
9 the San Joaquin-Firebaugh-Chowchilla Bypass area for which  
10 DWR intends to do some temporary repairs provided they're  
11 not stopped by weather.

12 Now, in addition to those PL 84-99 sites we have  
13 24 Ayres sites that need to be done. And we have been  
14 working with the Corps to divvy up between the two  
15 agencies who does what. We're very close to agreement.  
16 The Corps will be taking on more than half of the sites,  
17 leaving something around 8 to 12 sites for DWR to take on.

18 And one of the issues has been that under PL  
19 84-99, the Corps has already declared an emergency. And  
20 that allows for an expedited NEPA compliance process and  
21 expedited biological consultations.

22 For the Ayres sites the Corps isn't sure whether  
23 or not it has the authority to make a declaration. And so  
24 it hasn't done so yet. We have further discussions with  
25 the Corps on this point. Without that declaration, the

1 resource agencies have not been at this point willing to  
2 say that they are -- can exercise emergency ESA compliance  
3 procedures or NEPA procedures. So that is an issue that  
4 lingers, that we have discussions with the Corps scheduled  
5 and further discussions with NOAA Fisheries and the Fish  
6 and Wildlife Service. The subject has been broached with  
7 NOAA Fisheries a couple of times. And we haven't been  
8 able to get in contact with Fish and Wildlife Service and  
9 have a good discussion, although we've tried. And we have  
10 something that's scheduled for the very near future for  
11 them.

12 That's where things stand on those 71 sites.

13 Are there any questions on anything I've  
14 presented?

15 VICE PRESIDENT HODGKINS: Rod, is there a  
16 different federal standard in terms of cost effectiveness  
17 for Sac bank sites and PL 84-99 sites?

18 DIVISION OF FLOOD MANAGEMENT ACTING CHIEF MAYER:

19 Yes, there is. Under PL 84-99 the Corps is  
20 required to do a benefit-cost analysis and justify the  
21 work. And many of the PL 84-99 eligible sites aren't  
22 passing the benefit-cost analysis, making them ineligible  
23 at this time. So there's further work to do on economics  
24 for many of these.

25 I think with the further work some -- we will

1 have more Order 1 and 2 sites ultimately probably next  
2 year. But probably not all of them.

3 With respect to Sacramento River Bank Protection  
4 Project, it's unique. And unlike other Corps projects  
5 that require a benefit-cost analysis, it does not.

6 VICE PRESIDENT HODGKINS: Thank you.

7 PRESIDENT CARTER: Okay. Any other questions for  
8 Mr. Mayer?

9 Thank you very much.

10 DIVISION OF FLOOD MANAGEMENT ACTING CHIEF MAYER:

11 Okay. I'll turn it over to Ron Lee.

12 (Thereupon an overhead presentation was  
13 Presented as follows.)

14 PRESIDENT CARTER: Go ahead, Mr. Lee.

15 PROGRAM MANAGER LEE: Good morning. I'm here to  
16 give you a construction status update of the currently  
17 underway 33 repair sites.

18 The structural repair work for the original 29  
19 sites are scheduled to be completed November 1st. And it  
20 looks like we're going to meet that target date.

21 The structural repair work for 13 of the 29 have  
22 been completed. The plantings at all sites and the  
23 fascine bundles and pole cuttings for some of the sites  
24 have been deferred until next spring. That work is not  
25 considered part of the structural work.

1           In addition, 4 new sites have been added to the  
2 original 29 sites. So now there's a total of 33 sites.

3           The environmental permits and right of way for  
4 those 4 sites have been secured and construction has begun  
5 at one of the sites.

6           With regard to the plantings, there's actually  
7 hundreds of thousands of plants in these repair sites. So  
8 the contractor is responsible for maintaining and  
9 replacing dead plants for a period of one year. And  
10 there's going to be a follow-up plant maintenance contract  
11 that's going to be issued to maintain these plants for a  
12 period of two years. And at the end of the third year,  
13 the recommendation -- the reclamation districts will be  
14 responsible for maintaining these plants.

15                               --o0o--

16           PRESIDENT CARTER: This one's an eye chart.

17           (Laughter.)

18           PROGRAM MANAGER LEE: I gave you a more legible  
19 one on the last sheet. And it's probably just easier to  
20 go to that one.

21           I'll just summarize this. As I said earlier 13  
22 of the sites have been completed. Six of the sites are  
23 between -- are 99 percent complete. Five of the sites are  
24 between 80 to 89 percent complete. Five of the sites are  
25 about 60 to 79 percent. And then 4 of the sites are at 0

1 percent complete.

2 --o0o--

3 PROGRAM MANAGER LEE: We essentially have two  
4 types of repair. There's the land-based repair.  
5 Essentially what they do is they build a road down to the  
6 water's edge with excavators and bulldozers.

7 --o0o--

8 PROGRAM MANAGER LEE: And then the rock trucks  
9 are backed up to the water's edge and they're dumped. And  
10 then they're using long-reach excavators in tandem to  
11 place the rock.

12 --o0o--

13 PROGRAM MANAGER LEE: The water-based is mainly  
14 used to the south of the Feather River.

15 --o0o--

16 PROGRAM MANAGER LEE: What it is is these are  
17 rock barges that come from the Delta, and they're used in  
18 conjunction with a land -- barge-based crane.

19 At this site what they're doing is they take the  
20 rock from the barge and they swing over and drop it on to  
21 the slope.

22 --o0o--

23 PROGRAM MANAGER LEE: And then long-reach  
24 excavators and bulldozers are used to place rock,  
25 especially around the trees and bushes.



1                               --o0o--

2               PROGRAM MANAGER LEE: This is one of the  
3 completed sites. This is Bear River 10.1. If you look at  
4 the tan colored area along the slope, that's actually  
5 erosion fabric control. There's actually ag soil  
6 underneath that and hydro-seeding. And you can see where  
7 the woody debris has already been placed. And the pole  
8 cuttings and the fascine bundles.

9                               --o0o--

10              PROGRAM MANAGER LEE: This is Bear River at 2.4.

11              SECRETARY DOHERTY: What is the fabric?

12              PROGRAM MANAGER LEE: The fabric is kind of --  
13 almost like a burlap material. It's actually made out of  
14 coconut shell fibers, and it's woven.

15              BOARD MEMBER BURROUGHS: Well, how long does that  
16 coconut fabric material last?

17              PROGRAM MANAGER LEE: I'm not sure. It's meant  
18 to hold everything in place until the seed takes hold of  
19 the ground.

20              BOARD MEMBER BURROUGHS: Thank you.

21                               --o0o--

22              PROGRAM MANAGER LEE: This is a Corps of  
23 engineers site. Its just south of Miller Park.

24                               --o0o--

25              PROGRAM MANAGER LEE: And this is at Sacramento

1 River 145.9. This is actually a setback levee.

2 There's a total of four setback levees on these  
3 projects.

4 --o0o--

5 SECRETARY DOHERTY: Excuse me. On that setback  
6 levee, was that state land, or was that private land  
7 acquired for setbacks? What was that?

8 PROGRAM MANAGER LEE: This is private land that  
9 was acquired through our Right of Way Department.

10 --o0o--

11 PROGRAM MANAGER LEE: This is Sac 32.5. It's  
12 another completed site. This is actually a pretty long  
13 site. It's over 2,000 lineal feet.

14 --o0o--

15 PROGRAM MANAGER LEE: This is one of the newer  
16 sites. This is at Deep Creek 14.

17 Pretty much all these sites are either -- we  
18 either show some type of distress either on the road or  
19 you'll see vertical erosion, such as this one.

20 This site is actually 1180 feet.

21 --o0o--

22 PROGRAM MANAGER LEE: This is another site --  
23 another type of a telltale sign of erosion where, as the  
24 erosion approaches this white line called the fog line,  
25 the roadway actually loses its support and will start to

1 crack along the edge of the road.

2 I was unable to show it in this picture, but  
3 you'll see the erosion is almost up to this railing. And  
4 that's why the railing's falling off is because it's  
5 eroded.

6 --o0o--

7 PROGRAM MANAGER LEE: Total project cost is  
8 estimated at 190 million. Total expenditures to date was  
9 at about 89 million.

10 --o0o--

11 PROGRAM MANAGER LEE: That's it.

12 Any questions?

13 PRESIDENT CARTER: Any questions for Mr. Lee?

14 Thank you very much. I'd like to commend the  
15 Department and all of its partners in doing a monumental  
16 amount of work in a very short amount of time.  
17 It's -- and that does not just mean the work on the  
18 ground. There's been a lot of work in the offices as  
19 well. So job well done. Thank you.

20 PROGRAM MANAGER LEE: Thank you.

21 PRESIDENT CARTER: All right. At this time we  
22 have Item 7, State of Emergency Board Actions.

23 General Manager Punia.

24 GENERAL MANAGER PUNIA: Jay Punia, General  
25 Manager, Reclamation Board.

1           I want to report that to keep this critical  
2 erosion site to work, DWR staff is acquiring the lands and  
3 the Reclamation Board staff and the staff counsel and  
4 General Manager is certifying through the U.S. Army Corps  
5 of Engineers that we have acquired the necessary right of  
6 way so that the Corps can keep the construction going  
7 under Public Law 8499.

8           And I want to commend the efforts of the Real  
9 Estate Branch. Paul Harris, a Senior Land Agent, is here.  
10 So they're working long hours to keep these certifications  
11 so that the work can continue on these critical erosion  
12 sites.

13           And DWR staff is working with the Corps and the  
14 Rec Board staff so that whenever needed, we can certify  
15 this. And during the last month we have certified several  
16 packages and provided to the U. S. Army Corps of  
17 Engineers.

18           That's it. Thank you.

19           PRESIDENT CARTER: Any questions of Mr. Punia?

20           Okay. Very good.

21           Then we'll move on to Item 8, which is the Three  
22 Rivers Levee Improvement Authority Monthly Report.

23           Mr. Brunner.

24           (Thereupon an overhead presentation was

25           Presented as follows.)

1           MR. BRUNNER: Thank you.

2           Good morning, President Carter and members of the  
3 Board. You should have in front of you our packet of  
4 handouts. There's three items: The first being the  
5 response to questions that you asked at the last meeting.  
6 I was going to touch briefly on those. And then there's  
7 the first supplemental report that -- the first report  
8 that we turn in for this meeting and the supplemental  
9 report to that. So those are the three documents that  
10 I'll be working with.

11           On the report for the responses to your questions  
12 from the last meeting, we reported six items that we  
13 responded back to you on. And I'd like to touch on at  
14 least three of them briefly for you during the meeting.  
15 The others will probably come up in some degree, perhaps  
16 during the course of my discussion on the monthly report.

17           But the questions that -- if you have that page  
18 now, it's a document dated 26th September -- the question  
19 was: Who was the firms that were considered for the  
20 restoration contract? And we list those there for you.  
21 When was the condemnation case filed for Dana? We give  
22 that timeframe there, which is 2005.

23           On Item No. 3 I'd like to make a note that --  
24 when was the Feather River -- pump station three repairs  
25 made and how much did they cost? We go through an

1 explanation here in the report. And I'm not going to try  
2 to do that here again. We did a lot of that last meeting.

3 But I would like to make a note on the second  
4 page of my report, where it begins "TRLIA does have" --  
5 it should be "does not have" on your copy "the actual cost  
6 estimate for that work." We have approached the Corps to  
7 get that cost. We still do not have it. And once we do  
8 have it, we will forward it to you for that work that was  
9 done on the Feather River.

10 PRESIDENT CARTER: I'm sorry. Mr. Brunner, I  
11 lost you there. On page 2, what change did you want to  
12 make?

13 MR. BRUNNER: It's on the first complete sentence  
14 where it says, "TRLIA does have the cost of the work  
15 completed in 1998." It was my typo, where it should say,  
16 "TRILIA does not have" --

17 PRESIDENT CARTER: Does not. Thank you.

18 MR. BRUNNER: I think the rest of the sentence  
19 would indicate that. But I -- in reviewing the document,  
20 I realized I left out the "not" on that.

21 On the fourth item under the question, "Do  
22 landowners have to provide cash calls?" we get the  
23 response. And I provided that to you last meeting too. A  
24 little elaboration on this from during this meeting is the  
25 first capital call has been made. That was for the \$20

1 million that we went through last time.

2           The second capital call is in late November. And  
3 right now TRLIA is cash solvent. We do have money and we  
4 are moving forward. We have received funds on Proposition  
5 13 from DWR. And thank you for the responses that DWR has  
6 given us and working with us on that.

7           So we are moving forward and we are paying our  
8 bills and have a financial plan in place for our  
9 operation.

10           That was some question that came up during the  
11 discussion last time. So I'll elaborate that during this  
12 meeting.

13           The other question that I'd like to point -- or  
14 make some other comment upon is, when it came up, is, "Has  
15 county completed updating or revising evacuation plans for  
16 the RD 784 area? I do have Aaron Hart that came with me  
17 today from OES, from the county, if there were more  
18 questions about this about where we are in the plan and  
19 what we're doing to help on the participation and  
20 discussion on the item. The county is in preparation to  
21 report on the plan and the goal is to have it done before  
22 the flood season is completed -- or has come upon us,  
23 which is -- the goal is to have it completed in November  
24 of this year.

25           The inundation maps that MBK are preparing for

1 us, that were requested to be done, are nearing  
2 completion. And the goal is to have those completed by  
3 the end of October. And then that would be backing into  
4 the final plan. So that's well underway. And the  
5 inundation maps are under review today, that is,  
6 currently.

7           The last question that was asked last time: Are  
8 the landowners aware that the setback levee alternative is  
9 being evaluated along the Feather River? And we did go  
10 through and we checked with our real estate people and  
11 talked with them and also on the environmental  
12 documentation that we have, and we conclude that the  
13 answer to that would be yes, that we have interacted with  
14 the folks to a large degree.

15           So if there's no other questions on the  
16 responses, I'll move to my monthly report at this time.

17           PRESIDENT CARTER: Mr. Brunner, I think -- and  
18 then that question was specifically -- we're using  
19 landowners in two contexts here, the landowners with  
20 regard to Item 6 in terms of the setback levee alternative  
21 is the existing landowners, IEG, the people who are living  
22 there now.

23           MR. BRUNNER: The residents, yes. And our  
24 response is in that context of the residents and having  
25 talked about that.



1           PRESIDENT CARTER: Thank you.

2           MR. BRUNNER: And I think in future meetings to  
3 avoid the conflict, instead of saying landowners for the  
4 developers, I'll just say the developers are moving  
5 forward, to make that contrast between developers and  
6 residents.

7           PRESIDENT CARTER: Thank you.

8           BOARD MEMBER BURROUGHS: On number 5 you said the  
9 completion date is October 31st, but you've said the  
10 evacuation plan will be sent out in November.

11          MR. BRUNNER: Well, the evacuation plan is  
12 for -- is being updated in November. The plan is to have  
13 it completed, the updates, in November. The inundation  
14 maps, which are a portion of that plan, or are being  
15 factored into that plan will be completed in October -- by  
16 the end of October.

17          SECRETARY DOHERTY: Did you say you have someone  
18 here today to address that evacuation --

19          MR. BRUNNER: I do have someone available that  
20 could answer questions. Aaron Hart could come forward,  
21 who's overseeing the Office of Emergency Services for Yuba  
22 County.

23          SECRETARY DOHERTY: On the Plumas Arboga Road  
24 that flooded so that people couldn't use that, has that  
25 been changed or lifted or --

1 MR. BRUNNER: Aaron, do you want to check that?

2 MR. WARD: Good morning. Aaron Ward with Yuba  
3 County office of Emergency Services.

4 I'm sorry. Could you repeat the question?

5 SECRETARY DOHERTY: Yes. The Plumas Arboga Road  
6 flooded.

7 MR. WARD: Yes.

8 SECRETARY DOHERTY: So they were not able to use  
9 that as an escape route?

10 MR. WARD: Correct.

11 SECRETARY DOHERTY: Has that been changed?

12 MR. WARD: Well, the use of specific roads during  
13 an incident is going to be depending on what their  
14 condition is at that moment. There is not currently any  
15 plans as far as county public works goes to do anything  
16 with that road prior to this flood season.

17 SECRETARY DOHERTY: It would be difficult if you  
18 did raise that road, because then that would hold more  
19 water, wouldn't it, to the north? Flooding Mrs. Hoffman,  
20 I believe.

21 MR. WARD: Unfortunately I don't know the  
22 specifics of what would be involved with raising a road.  
23 That's someone else at the county level you'd have to talk  
24 to.

25 SECRETARY DOHERTY: But you will have an

1 evacuation plan --

2 MR. WARD: We have an evacuation plan now. What  
3 we're doing right now is going through the process of  
4 updating and revising it. The latest revisions or updates  
5 to that plan were done in 2001.

6 SECRETARY DOHERTY: Okay. Thank you.

7 MR. BRUNNER: Any other questions on our  
8 responses to the earlier questions?

9 BOARD MEMBER BURROUGHS: Well, is the evacuation  
10 plan going to be disseminated to all landowners or  
11 residents, or is it something that's just at the county  
12 level?

13 MR. WARD: The evacuation plan is meant to be  
14 used as a resource to the public safety departments within  
15 the county and also to the other -- the other directors at  
16 the county level. As far as information going out to the  
17 public, we do have a website -- a web page on the county's  
18 website, which will give you information as to specific  
19 procedures that might be followed during an evacuation.

20 The evacuation plan we're working on doesn't  
21 necessarily have information that would pertain to every  
22 landowner or resident in the county. There are specifics  
23 to special needs groups' evacuations, animal rescue or  
24 evacuation that may not pertain to every member of the  
25 community.

1           BOARD MEMBER BURROUGHS: Thank you.

2           VICE PRESIDENT HODGKINS: A question.

3           The inundation maps I would assume show, assuming  
4 a failure at some location, the time to inundation at  
5 various depths throughout the region; is that correct?

6           MR. BRUNNER: I'll ask Ric Reinhardt to address  
7 that issue from MBK.

8           MR. REINHARDT: Ric Reinhardt with MBK. We  
9 prepared draft maps. And what they show is a failure  
10 point on the Yuba River and what the time and the  
11 inundation associated with -- increments of time, like the  
12 first 2 hours what the floodplain looked like, what does  
13 it look like in 4 hours, 12 hours, until it fills the  
14 basin and reaches some type of pool. And we've looked at  
15 that for a failure to the Yuba River levee, the Feather  
16 River levee, the Bear River levee, and the Western Pacific  
17 Interceptor Canal. And so -- but depending on where the  
18 failure was, it would affect the question that Ms. Doherty  
19 had about which evacuation routes would the -- the county  
20 would then recommend to the public.

21           VICE PRESIDENT HODGKINS: Okay. And the question  
22 I would ask now: Is the inundation map going to be made  
23 available to the residents along with some explanation of  
24 what it means? That's I think the most meaningful tool  
25 that you have.

1           MR. REINHARDT: I would defer to Aaron Ward and  
2 OES on what their intent is to do -- on that information.

3           MR. WARD: The inundation maps could be made  
4 available. At this time I don't have any plans to  
5 distribute them to all residents, but certainly they're  
6 going to be public information that's available.

7           VICE PRESIDENT HODGKINS: How about putting them  
8 on the website?

9           MR. WARD: Yeah, We could do that as well.

10          VICE PRESIDENT HODGKINS: And then I know in  
11 Sacramento they held public meetings where, among other  
12 things, they explained how the maps work, so that a  
13 resident could understand where he lives, what information  
14 he could get from the map.

15          MR. WARD: At this time, there's not any plans to  
16 do that as far as our evacuation plan goes.

17          VICE PRESIDENT HODGKINS: Okay. I do think --  
18 and -- are you new?

19          MR. WARD: Yes, sir. I've been in this position  
20 about seven weeks now.

21          VICE PRESIDENT HODGKINS: Okay. Because when the  
22 subcommittee was discussing this in some of our meetings  
23 on the permit, I think the inundation map was a tool that  
24 the subcommittee felt was very important to help the  
25 public understand what they're going to be faced with if

1 they are actually evacuated. And so that was at least an  
2 understanding on the part of one member of the  
3 subcommittee that those maps would be made available and  
4 that there would be work done to help the public  
5 understand.

6 MR. WARD: I certainly don't object to that. And  
7 I'm open to further discussions on making that information  
8 available.

9 VICE PRESIDENT HODGKINS: All right.

10 PRESIDENT CARTER: I think in general at both the  
11 subcommittee meetings and the Board meetings, there's been  
12 a strong urging to have a very extensive and effective  
13 public outreach efforts on the part of Three Rivers Levee  
14 Improvement Authority on, in particular, the public safety  
15 issues, the evacuation plans, how does somebody get out of  
16 the area from their point of residence or occupation, and  
17 the inundation maps and so forth. So --

18 MR. WARD: I do know that as part of the county's  
19 multi-hazard mitigation plan there were packets of  
20 information, but did not include the inundation maps that  
21 were made available to the public. In fact, I believe  
22 that in excess of 300 have been printed and distributed  
23 thus far. But --

24 PRESIDENT CARTER: There's clearly a concern on  
25 this Board that there are individuals out there that we

1 hear through the grapevine are not getting the  
2 information. So there's a concern about the public  
3 outreach effort and the effectiveness of it.

4 MR. WARD: I understand that, and that's been  
5 discussed, and there are plans to address it.

6 SECRETARY DOHERTY: I do have a flier that came  
7 with a utility bill, and it talked about flood  
8 preparedness info from Yuba City. But not everybody on  
9 the other side of the river in the Linda area perhaps has  
10 a computer or maybe don't even take a paper. So, now, how  
11 are we going to reach those people? Everybody moving into  
12 the new Plumas Lakes subdivision I think is given an  
13 evacuation folder when they first move in, are they not?

14 MR. BRUNNER: Yes. And, in fact, the folder I  
15 have is here, that is given. And it does have the  
16 evacuation routes, it has the information. We do provide  
17 information on quite a bit of this on our website, the  
18 TRLIA website. I think the idea of including any more  
19 information on our TRLIA website is fine. And Aaron  
20 represents the county. I mean we are separate in the Yuba  
21 County area. So I think providing both websites would be  
22 very beneficial.

23 The idea of getting words out, other than through  
24 computer or other areas, we do have -- now are forming a  
25 TRLIA newsletter that goes out to talk to folks in Plumas

1 Lake area and also in the area that we impact about what  
2 we're doing. So we could provide information on flooding  
3 in that package too in our newsletter that goes out via  
4 mail.

5 SECRETARY DOHERTY: What about putting it into  
6 their utility bills?

7 MR. BRUNNER: That has I think a good measure of  
8 merit to really try to work with the utility companies to  
9 do that. And I'll take that on and work with the county  
10 and share work with Aaron to try to do that.

11 SECRETARY DOHERTY: Okay.

12 MR. BRUNNER: I don't know why it could not  
13 happen. And we'll take that action to try to work that  
14 out. I think it's an excellent idea.

15 We do provide information at public meetings. We  
16 just had a public meeting, an outreach on evacuations and  
17 just emergency instances in Yuba County. I believe,  
18 Aaron, you guys hosted one in October recently, just a few  
19 weeks ago, where you talk about levees, we talk about all  
20 types of emergency services, hand out information for  
21 folks, and advertise that for people to come and interact  
22 with the groups.

23 BOARD MEMBER BURROUGHS: How many people  
24 attended?

25 SECRETARY DOHERTY: Where was that?



1           MR. BRUNNER: I'll let Aaron speak to that.

2           MR. WARD: The meeting that Mr. Brunner is  
3 referring to was hosted by the group of folks that are  
4 working on the county's Multi-hazard Mitigation Plan. It  
5 was held at the Government Center. As far as  
6 advertisement, I believe they took out an advertisement in  
7 newspaper as well as distributed fliers at various  
8 community points throughout the county.

9           And as far as attendance goes, I would just have  
10 to give you a guesstimate of what I saw. And I would say  
11 it was in the neighborhood of 75 people.

12          BOARD MEMBER BURROUGHS: Thank you.

13          MR. SHAPIRO: Scott Shapiro, special counsel for  
14 Three Rivers.

15          I just want to tie together a little bit of what  
16 you heard. In particular, I harken back to our meeting in  
17 Merced when Ms. Burroughs was very concerned to make sure  
18 new residents and existing residents knew the risks of  
19 living in that area. And we do have a packet that Paul  
20 talked about that is given to people when they purchase  
21 homes in Plumas Lakes. We have an additional packet which  
22 was given to people when they initially sign up for a  
23 home. So you actually get it twice. You sign an  
24 acknowledgement both times that you received it. And we  
25 have a newsletter that's going out quarterly within Three

1 Rivers that updates people as to what's going on at our  
2 website.

3           And so I think at our next management meeting  
4 we'll go back and talk about the inundation maps, talk  
5 about whether they can be included in that packet.  
6 Certainly they're available in Yuba County. And we are  
7 all for distributing the information. I mean we have --  
8 we have heard the message very clearly and we have really  
9 sought to provide that information. And we're happy to  
10 update you monthly on how that dissemination's going.

11           PRESIDENT CARTER: Thank you.

12           MR. BRUNNER: All right. Well, thank you.

13           If we move to the monthly update -- and I'll be  
14 referencing back and forth with those two documents --  
15 I'll try to make this brief to get through the meeting  
16 here quickly today.

17           PRESIDENT CARTER: Thank you.

18           MR. BRUNNER: -- is the -- I'm going to walk  
19 through the phases of a project again, that I typically  
20 will do, and referencing this map here.

21           On Phase 2, which is the green area on my map,  
22 which is the Western Pacific Interceptor Canal here and  
23 over here on the Yuba, and a little bit on the Bear River  
24 work that we've been reporting on and it's making good  
25 progress. The work will be completed this month except

1 for a few areas that may extend a little bit into  
2 November. And hopefully we won't have to do that. But  
3 there is some riprap on the WPIC that may go into November  
4 for work to be done. The seepage berms on the Bear, the  
5 potential is there that work may extend into the November  
6 timeframe.

7 We're beginning to dialogue with the DWR staff  
8 and Rec Board to work that out as to the timing on that.

9 The overall good news is that the work is  
10 completing, and we think we'll be flood ready on those  
11 systems.

12 On Phase 3, which is the purple area right down  
13 in through here on the Bear River setback, really great  
14 success on this. The project is moving forward. It  
15 should be completed on schedule this month. And the only  
16 thing that is left there is the -- going in and putting in  
17 some relief wells. I mean it is wrapping up very quickly  
18 here.

19 The restoration of this -- with River Partners is  
20 beginning. We did award that contract. We talked about  
21 that. Later on on your agenda you'll have a discussion  
22 that impacts the elderberries. So we'll talk more about  
23 that during that time.

24 We did have originally planned a dedication, a  
25 ceremony for October 27th. We've ended up doing some --

1 through scheduling conflicts really within our system here  
2 decided to reschedule that -- postpone that for a little  
3 bit to make it more available for more people to attend,  
4 some senior level people. We really felt that it was a  
5 significant moment for everyone that participated with us  
6 to have an opportunity to come. And we were not  
7 experiencing that.

8           So no real urge to have to do it immediately.  
9 It's one that we really want to celebrate a significant  
10 setback levee that's being put in place.

11           The good news is it's completing. And it too  
12 will be flood ready for the season.

13           On Phase 4, for the Yuba, which is shown in blue,  
14 which is this area here, this is the project that we are  
15 talking about for Phase 4 to implement and have it done on  
16 an agreement that we had with The Rec Board and accomplish  
17 that work this year, at an accelerated basis. That is  
18 completing also and on a very rapid pace and will be  
19 completed very soon too and is moving forward.

20           There is one stretch of slurry wall, it was  
21 installed, about 150 feet, that as we did our field  
22 testing may be deficient, at least we tend to think it is.  
23 And we're in discussions with the contractor and we'll be  
24 replacing it. So our quality control is in place and is  
25 working to make sure we get a good levee on that. But

1 that will be scheduled to be finished in time too.

2           This is the point that we talked about earlier  
3 when Mr. Reinhardt came forward and asked about the  
4 project on 14B. And I really am glad that you decided not  
5 to postpone that action, and that at least you'd hear us  
6 out today. Because we are bringing a levee up to 200-year  
7 standards. We are trying to finish this project this  
8 month. And this is the meeting of this month. And we  
9 want to resolve -- what is the issue here? Should we  
10 complete our project or not, if at all possible? -- during  
11 that discussion. So thank you very much for allowing us  
12 to speak on that particular issue.

13           Really the last part of our project that we're  
14 working through is on Phase 4 for the Feather River, which  
15 is this area here in blue and remind you that we've broken  
16 this project really into three phases, three segments.  
17 There's segment 1, that's from the Bear up to the Star  
18 Bend area; segment 2, which is this middle part here where  
19 we're considering a setback levee that's underway; and  
20 then phase 3 -- segment 3, which is up here.

21           Segments 1 and 3 are well under design, 35  
22 percent design efforts is being completed now. Your  
23 staffs are reviewing it. We're reviewing it. We hope to  
24 have that under construction in the 2007 time period.

25           This middle section here is currently really the

1 focus of our efforts today. We have an EIR that addresses  
2 the entire stretch of the Feather. But the major point I  
3 think is the setback, whether to do it or not. And we  
4 hope to have a decision on that in the November time  
5 period this year. That's when we're going to culminate on  
6 the CEQA documentation on that.

7           Depending upon what happens with that, we will  
8 still -- the setback's really coupled with I think the  
9 Prop 180 issue on funding and availability on that. So  
10 there will be further discussions if Prop 180 passes with  
11 the Rec Board, with DWR about the availability of funding  
12 for that effort into the future that we'll pursue.

13           So you'll hear those pitches later on.

14           SECRETARY DOHERTY: Mr. Brunner, where was it  
15 that the slurry wall is defective? Is that on the Yuba  
16 near Arboga?

17           MR. BRUNNER: It was on the Yuba. And I'm not  
18 quite sure exactly where on this area through here it was.  
19 If that's important, I'll -- perhaps Ric may -- but this  
20 area along the Yuba River here that we were putting in the  
21 slurry wall this year the last few months, working 24-7 to  
22 do that, is where that occurred.

23           SECRETARY DOHERTY: Was it adjacent to where the  
24 previous break was, Mr. Reinhardt?

25           MR. REINHARDT: Ric Reinhardt, MBK Engineers.

1           No, this is the Phase 4 raise we're doing  
2 upstream of the Union Pacific Railroad. So the entire  
3 5,300 feet of wall is constructed. And our quality  
4 control testing afterwards of about 150 foot section  
5 failed. The compress and strength requirements. And so  
6 they've actually already started working it back out. And  
7 we intend to have that wall replaced here in the next  
8 couple of days.

9           SECRETARY DOHERTY: Thanks.

10          MR. BRUNNER: Thanks, Ric.

11          Now, the last really part on the Phase 4 on the  
12 Feather is last meeting we had a discussion -- a fairly  
13 extensive discussion about the potential cost increase on  
14 the Feather. And one of the responses to your questions  
15 from the last time is the response package that I give you  
16 here today.

17          The updates that I have on that that's in my  
18 report is that we have -- we continue to work with staff  
19 on that. We do have a draft report from GEI that has come  
20 in that your staff are reviewing as potential fixes for  
21 that. We do not have the total solution for that problem  
22 solved yet, but we are hopeful that we'll get to the  
23 solution on that.

24          We implemented in the field a contract that you  
25 can get more geotechnical information to help that

1 decision that is funded and underway. And we are  
2 installing a monitoring system out there to get  
3 groundwater data. This is some information that the  
4 entire team, ourselves, the Corps, DWR really needed to  
5 have to try to get to the final solution of what was  
6 happening on that reach of the levee. So I think we'll  
7 make good progress on that too.

8           The last part of my presentation really just is  
9 the building permit update, which is this map here -- or  
10 this chart.

11                               --o0o--

12           MR. BRUNNER: And this is the table and chart  
13 that shows the progress of our building permits being  
14 issued. This line here is the 800 that we were allowed to  
15 be issued in 2005. And there were 700 in 2006 under the  
16 old agreement. Today we're looking at an agreement where  
17 there is really no limitation. But it still is a contrast  
18 that shows in 2006, this year, is that through here we  
19 still haven't achieved issuing all 700 permits that we  
20 were authorized under the old agreement on it. So there  
21 is some effort of going up. But there's not really  
22 tremendous building. But there is still some building  
23 going on.

24           If there's no other questions on our report, then  
25 we are completed.



1           You'll get two more shots with us on two other  
2 topics.

3           PRESIDENT CARTER: Questions?

4           BOARD MEMBER BURROUGHS: Yeah, I have a question.

5           Is this part -- is this letter that we received  
6 part of this report or does it come later?

7           This is --

8           PRESIDENT CARTER: Which letter is that?

9           BOARD MEMBER BURROUGHS: This is in regards to  
10 the Feather River, Bear River and Western Pacific  
11 Interceptor Canal. This was just handed to me this  
12 morning. It's from the Fish and Wildlife Service.

13          STAFF COUNSEL MORGAN: That's item 14A, I  
14 believe.

15          BOARD MEMBER BURROUGHS: So this is for 14A?

16          STAFF COUNSEL MORGAN: Correct.

17          BOARD MEMBER BURROUGHS: Okay. Thank you.

18          PRESIDENT CARTER: Any questions for Mr. Brunner?

19          Okay. Very good.

20          MR. BRUNNER: Thank you.

21          PRESIDENT CARTER: Thank you.

22          At this time I would suggest that we take a  
23 ten-minute recess. And we will be back here at 11:20  
24 according to my watch. Thank you.

25          (Thereupon a recess was taken.)

1           PRESIDENT CARTER: Okay. Ladies and gentlemen,  
2 let's continue with our meeting.

3           We are at Item 9 of the consent calendar, which  
4 are there no items.

5           So we are on to Item 10 of Requested Actions.

6           The Project Study or Agreements: American River  
7 Common Features Project, Mayhew Levee Raise.

8           Ms. Bronson.

9           ENVIRONMENTAL SCIENTIST BRONSON: Good morning,  
10 Mr. President, members of the Board, general Manager  
11 Punia.

12           I'm here really to give you just an information  
13 update on the Mayhew Levee Project. As Mr. Morgan  
14 explained, it's on the action agenda in case you wish to  
15 make some kind of policy directives toward us. But we are  
16 not asking you to make any kind of decisions or take any  
17 action on this project today.

18           (Thereupon an overhead presentation was  
19 Presented as follows.)

20           STAFF COUNSEL MORGAN: Let me interject just a  
21 minute. And then I'll come back again at the end if you'd  
22 like.

23           But I've been doing this job for almost four  
24 years and it's taken me almost that long to realize the  
25 way things have worked historically is that the staff has

1 worked in the background, behind the scenes, with the  
2 Corps, with our local partners, to develop project  
3 alternatives, develop the CEQA documents and whatnot, and  
4 then bring things before the Board more or less complete,  
5 eliminating the Board's opportunity for giving any policy  
6 guidance.

7           And I've asked staff to change that policy, and  
8 it's changing as of right now. Now you will not  
9 necessarily have the opportunity to -- well, you will not  
10 flatly have the opportunity to micromanage the project or  
11 pre-presume any CEQA outcome. The whole idea though is to  
12 take policy issues that are important to the public, that  
13 are important to the Board, and direct -- give some direct  
14 guidance to the staff on what things are important to the  
15 Board. Because these have never been itemized for action  
16 in the past, the Board did not have that opportunity. And  
17 so we are changing the practice to give the Board the  
18 opportunity. It does not have to take any action today.  
19 As I indicated at the outset, for the benefit of the  
20 public who wasn't here at the time, the Board's actually  
21 not selecting a preferred alternative at this meeting, but  
22 merely using this as the opportunity to provide any  
23 guidance to the staff on policy matters related to this  
24 project that it feels are appropriate at this time.

25           As you will hear from Ms. Bronson's presentation,

1 the spectrum of options is limited. But -- and that will  
2 always be the case with these projects. But the Board as  
3 the policy-making body should be considering whatever  
4 range of alternatives there is, whatever range of issues  
5 there is -- not CEQA alternatives, but policy  
6 alternatives -- and making those wishes known to staff at  
7 the earliest possible time.

8 SECRETARY DOHERTY: May I add something more?

9 In reviewing this project, it goes back to April  
10 1991. This project has been in the works for over 15  
11 years. And I know from reading that some of the people  
12 involved with it, not staff here, changed their minds and  
13 wanted changes. But I think that this is a problem that  
14 should be resolved by us or the neighborhood.

15 ENVIRONMENTAL SCIENTIST BRONSON: Well, actually  
16 1991 is when the American River watershed investigation  
17 was initiated. And there was a big overall American River  
18 Flood Control Project, including actions on Folsom Dam,  
19 what to do in this area in response to the 1986 floods.  
20 The Mayhew project was specifically authorized after that,  
21 in 1999, as part of Water Resources Development Act of  
22 1999.

23 This is what's called common features.

24 PRESIDENT CARTER: Please proceed.

25 --o0o--

1 ENVIRONMENTAL SCIENTIST BRONSON: As you may  
2 recall, a draft environmental impact  
3 statement/environmental impact report was circulated for  
4 public review almost a year ago. And you received a copy  
5 of it in your December 2005 package.

6 --o0o--

7 ENVIRONMENTAL SCIENTIST BRONSON: And just a  
8 little background on the project. The levee -- as I said,  
9 the levee -- the Mayhew project was authorized in the  
10 Water Resources Development Act by Congress in 1999. And  
11 the existing Mayhew levee was constructed by a private  
12 developer. And it's currently considerably lower and  
13 smaller than the federally levied -- authorized levees  
14 downstream or on the opposite side of the river, and also  
15 lower than the natural ground upstream on the project.  
16 It's a weak point in the system, which is putting the  
17 neighborhood at risk of flooding.

18 --o0o--

19 ENVIRONMENTAL SCIENTIST BRONSON: The existing  
20 levee is also located in a rather narrow area. The  
21 parkway there isn't that wide, and the levee itself is  
22 located between property lines and people's back yards,  
23 and a line of about 300 trees including three Heritage  
24 Oaks on the waterside of the levee.

25 And the local community -- you're going to hear

1 from some of them, I'm sure -- has been very interested in  
2 this project, and they desire to protect the trees and  
3 especially the Heritage Oaks. And for this reason, the  
4 staffs for the Corps and your Board and the SAFCA, we have  
5 worked during the last year to try to come up with  
6 alternatives that could meet the objectives for this  
7 project.

8           And the objectives for the Mayhew project are to  
9 construct a levee that can safely contain 160,000 cfs in  
10 the American River with three feet of freeboard. That's  
11 for a future 200-year level of protection when features at  
12 Folsom Dam have been completed.

13           Also to incorporate the new levee into the  
14 Sacramento River Flood Control Project, to certify that  
15 the levee meets the minimum requirements of the National  
16 Flood Insurance Program, and to design and construct a  
17 project in an environmentally benign way as possible.  
18 This has proven to be quite a challenge.

19           In the draft final EIS/EIR you're going to  
20 receive shortly there are still six alternatives,  
21 including five construction alternatives. And all those  
22 construction alternatives could reduce the risk of  
23 flooding. But they are not all equal in their performance  
24 and reliability.

25   --o0o--

1 ENVIRONMENTAL SCIENTIST BRONSON: And as  
2 described in the draft appendix that you were sent ahead  
3 of this meeting, the Corps has determined that among the  
4 five construction alternatives, even as modified during  
5 the last year, the Corps is willing to support and certify  
6 for FEMA flood insurance purposes only one of them. And  
7 that's the earthen levee with 3-to-1 waterside slope. And  
8 the implications of that is that most of the trees on the  
9 waterside of the levee will have to be removed -- either  
10 relocated or removed during the construction process.

11 The other alternative was to take out people's  
12 backyards. And that was not considered -- even considered  
13 an option.

14 And we recognize that it's usually the -- you as  
15 the lead agency under CEQA have more than one alternative  
16 that you would be able to choose from and approve. And  
17 because the Corps did only support one of the  
18 alternatives, it is that the Board's option may be more  
19 limited in this particular project. And that's why we  
20 wanted to bring this to you ahead of time before you have  
21 to make a decision.

22 So are you having any more questions about this,  
23 before I leave it to Tim for the more technical  
24 discussion?

25 PRESIDENT CARTER: Mr. Kerr, please continue.

1 PROJECT MANAGER KERR: Good morning, President  
2 Carter, General Manager Punia, and members of the board.  
3 Tim Kerr, the Project Manager for the American River  
4 Common Features Project.

5 --o0o--

6 PROJECT MANAGER KERR: I want to share with you  
7 some information that the Corps has recently presented  
8 regarding their decision to support the full levee. They  
9 presented this information at the SAFCA Board and in a  
10 public meeting that was held in the community in  
11 September.

12 The Corps is supporting Alternative 6, the full  
13 levee, because it meets the objective of the authorized  
14 project to perform levee improvements that can meet an  
15 emergency release from Folsom Dam of 160,000 cfs, it meets  
16 the Corps of Engineers' mandatory engineering criteria  
17 regarding the design and construction of levees, and it  
18 also meets the FEMA requirements for levee construction  
19 and certification.

20 --o0o--

21 PROJECT MANAGER KERR: This is a cross-section of  
22 the levee that the Corps is planning to build with our  
23 support, if we choose to give it. It's the standard levee  
24 profile: 3-to-1 waterside slope, a 20-foot crown width,  
25 and a 2-to-1 slope on the land side. And it's also going



1 to have a slurry wall to a depth of 60 feet.

2 --o0o--

3 PROJECT MANAGER KERR: There's a plan view of the  
4 project area that indicates the stretch of levee that will  
5 be repaired and replaced with a brand new levee.

6 --o0o--

7 PROJECT MANAGER KERR: The levee will be 4300  
8 feet long. It will increase the height by about three  
9 feet, so that it is in parity with all of the other levees  
10 in the lower American River system. It will have a 3-to-1  
11 waterside slope, 2-to-1 landside slope. It will increase  
12 the footprint from what's out on the ground now by about  
13 35 feet. We will have ten-foot-wide access easements on  
14 the landside and the waterside, the 60-foot-deep slurry  
15 wall, and the 20-foot crown width.

16 --o0o--

17 PROJECT MANAGER KERR: Some of the considerations  
18 that the Corps really had to ponder and struggle with when  
19 they came to this conclusion are listed here in this  
20 slide. I got this slide from the Corps. They looked at  
21 the cost of the different alternatives; a petition that  
22 was received from the residents, that was actually mailed  
23 to DWR and the Rec Board, that indicated a large group of  
24 support from the community, roughly 400 adult signatures  
25 in favor of a traditional levee. They considered what the



1 public. And we also had a technical meeting with some  
2 members from the community to discuss some of his specific  
3 concerns with the flood wall. He was really concerned  
4 about having discontinuities at the ends and the base of a  
5 flood wall and the potential for seepage paths and piping  
6 to develop.

7           After the Katrina disaster the Corps is now  
8 reexamining all their engineering criteria. And one of  
9 his concerns was that if we built a flood wall today, it  
10 might not meet criteria in a few months from now because  
11 of that changing guidance.

12           Another concern of his is that a standard levee  
13 can easily be raised with more dirt. You can just build  
14 out on the land or water side and raise the levee. You  
15 can't really easily raise a flood wall. It's much more  
16 complicated to do so, and you would have to make sure the  
17 foundation would be designed for any future improvements  
18 like a raised flood wall.

19           Another concern of his was overtopping. We'd  
20 have to either do some sort of hardened levee crown or  
21 flashboards to prevent any type of overtopping or  
22 outflanking of this feature. And already the cost --  
23 preliminary costs are coming back, that a flood wall would  
24 be substantially more than a standard levee. And the  
25 design was never fully completed. And to go to a complete

1 level of design, you'd have to do a much higher level of  
2 design scrutiny and detail. And already the costs were  
3 exceeding the other alternatives.

4 And also that there's still a residual  
5 probability of tree mortality even if we do these efforts  
6 to attempt to save the trees by putting a slurry wall so  
7 close to their proximity and the sheet piles adjacent to  
8 the root ball, that it substantially reduces the  
9 likelihood that they'll survive any type of impact.

10 --o0o--

11 PROJECT MANAGER KERR: The floodfight issues of a  
12 flood wall were also of great concern for geotech uses.  
13 It's difficult to increase a flood wall height in a  
14 floodfight situation. You can't just sandbag it and raise  
15 the height or do a mud box or something like that. It  
16 would be much more difficult. And the flood wall would  
17 reduce access and limit the ability for trucks to pass  
18 each other and limit heavy equipment to come in and bring  
19 in more materials.

20 --o0o--

21 PROJECT MANAGER KERR: These are the  
22 corresponding milestones to bring completion to this  
23 project. They issued their alternative recommendation in  
24 August. We are hoping to bring this EIR before you for  
25 CEQA certification. And we'll be requesting that from you

1 in November. Then we hope to proceed with real estate  
2 acquisition for transplanting, mitigation, and natural  
3 project construction in early 2007. The Corps will get  
4 their record of decision on the final EIS in early 2007.

5 --o0o--

6 PROJECT MANAGER KERR: And we'll be transplanting  
7 elderberries out of the project footprint and the impacted  
8 oaks in February 2007. And we'll be hopefully  
9 constructing mitigation sites some time in the spring of  
10 '07, and then start construction of the actual new levee  
11 in the summer of '07, with completion hopefully coinciding  
12 with just about the start of flood season in winter of  
13 '07.

14 And that completes my presentation. If you have  
15 any questions for me or Annalena, we'd be happy to address  
16 them.

17 SECRETARY DOHERTY: Yes. But you're not going to  
18 try and transplant those large oaks, are you?

19 PROJECT MANAGER KERR: We think that those oaks  
20 are too large for the available technology to transplant,  
21 like they use tree spades. And I know there are  
22 representatives from SAFCA here today that offered to  
23 speak and answer questions. They're kind of the experts  
24 on team for transplanting oaks. And my understanding from  
25 them is the large oaks are just too big to transplant.

1           SECRETARY DOHERTY:  Didn't some of those oaks or  
2 one of those oaks fall after this project was started?

3           PROJECT MANAGER KERR:  It certainly did.  That  
4 was tree 74.  There was four very large Heritage Oaks in  
5 the project footprint that we were keeping an eye on.  And  
6 last winter, I believe it was, that the tree had a failure  
7 just of its own weight and the high wind conditions.  And  
8 they're all about roughly the same age, between 150 to 200  
9 years I think was the arborist's report on those trees.  
10 And, you know, they get about that age, they do start to  
11 fall.

12           BOARD MEMBER RIE:  I have a question.  
13           Did you say there was a maintenance access road  
14 on the waterside slope of the toe?

15           PROJECT MANAGER KERR:  It's vegetation-free zone,  
16 so we keep it clear for inspections.  And you could drive  
17 a maintenance vehicle, but it's not going to be a paved  
18 road surface or anything like that.  It's just going to be  
19 a zone that's free of vegetation.  We don't want any trees  
20 developing there right at the toe.

21           BOARD MEMBER RIE:  Are you planning on taking out  
22 the oak trees in that zone?

23           PROJECT MANAGER KERR:  Yeah, that zone.  And also  
24 for construction of the levee, we're going to need a  
25 little bit larger temporary work easement through there,

1 just to get all the trucks in, to bring in the new  
2 material, and facilitate the degrade that we've got to do  
3 for the slurry wall and whatnot.

4 But we will be planting and restoring the area  
5 outside of the ten-foot vegetation-free easement.

6 BOARD MEMBER RIE: Why are you guys requiring  
7 that extra ten feet? That's not part of the Corps  
8 standard.

9 PROJECT MANAGER KERR: I think it was just  
10 developed from -- through the project development, that  
11 that was a goal of this brand new levee is to keep that  
12 vegetation-free zone there or just to support the  
13 long-term viability and maintenance of this new levee.

14 BOARD MEMBER RIE: Do you have this ten-foot  
15 maintenance road of the waterside toe any place else?

16 PROJECT MANAGER KERR: I know typically from the  
17 levees I've seen on the waterside that the maintenance  
18 vehicles keep that ten-foot zone free. The Rec Board  
19 requires the ten-foot easement on the landside. But on  
20 the waterside usually they like to disk that area and keep  
21 it free of vegetation for inspection and maintenance  
22 purposes.

23 I'm not certain if it's in Title 23 that we have  
24 to have that requirement, but this is just --

25 BOARD MEMBER RIE: It's actually not in Title 23.

1 I mean typically we allow trees. And during flood events,  
2 that's going to be washed out anyway. I mean are you  
3 planning to maintain this road?

4 PROJECT MANAGER KERR: I think it will be seeded  
5 with native grasses. And the grasses do provide some  
6 protection from erosion and loss of material there.  
7 Because that area off the toe actually protects some of  
8 the foundation. If you get a scour off the toe of your  
9 levee, it could undermine the foundation that's actually  
10 supporting the levee. So we do want to keep an eye on  
11 that and make sure it's preserved.

12 BOARD MEMBER RIE: So by having this additional  
13 ten feet, is that going to require a lot more trees to be  
14 removed?

15 PROJECT MANAGER KERR: It could. I believe it  
16 actually does. The interesting thing about this is  
17 currently the majority of the trees are along the existing  
18 toe of the levee, and there's just a long strip of trees.  
19 And they all have to go. And then next to those existing  
20 trees is just open space and grass lands. So I don't  
21 think that it really adds to the number of trees  
22 significantly that will have to be taken for the project.

23 BOARD MEMBER RIE: If I recall correctly, we had  
24 several people from the public object to this additional  
25 ten feet because you're increasing the entire footprint of



1 this levee. And I don't know -- what is it? -- 4,000  
2 feet. So 4,000 feet times 10, that's an additional 40,000  
3 square feet of --

4 PROJECT MANAGER KERR: It's about an acre.

5 BOARD MEMBER RIE: -- you know, parkway that's  
6 destroyed for construction purposes. I mean that seems  
7 like an impact that we could avoid.

8 PROJECT MANAGER KERR: You know, as far as  
9 speaking to the impacts to the habitat, possibly Annalena  
10 could speak to that.

11 Annalena.

12 I know from an engineering perspective, I'd like  
13 to go out into this brand new levee design with the most  
14 robust possible levee that we can put out there. But it  
15 is a balancing act with the habitat and impact. So  
16 Annalena's more apt to speak to that.

17 ENVIRONMENTAL SCIENTIST BRONSON: Well, the Board  
18 usually requires a ten-foot easement, both landside and  
19 waterside of their levees. In some cases when the levee's  
20 really close to the water and it goes right into the  
21 river, that's not always possible. But that's what they  
22 usually do in ideal circumstances.

23 BOARD MEMBER RIE: Where is that requirement? I  
24 can't find that in Title 23.

25 ENVIRONMENTAL SCIENTIST BRONSON: Well, that's

1 what -- there can be no buildings or anything like that in  
2 a ten-foot easement. That's what we've always kind of --

3 BOARD MEMBER RIE: Oh, it wouldn't have any  
4 buildings on the waterside to begin with.

5 ENVIRONMENTAL SCIENTIST BRONSON: This is the  
6 desire of the construction agencies, to have that. And I  
7 don't think it's going to make any difference, because the  
8 trees will have to be removed during construction. And  
9 beyond that, there aren't any trees right now. It's just  
10 grassland and there will be grassland in the future.

11 PRESIDENT CARTER: Mr. Bradley.

12 CHIEF ENGINEER BRADLEY: Yes. Ms. Rie asked  
13 where else we have easements on the waterside. On the  
14 setback levee at the Three Rivers Project we have a  
15 50-foot setback on each side of the levee in that area.  
16 So we do have them in other cases.

17 In most of the ag areas we actually have access  
18 to the waterside toe if there's a large enough area, as  
19 long as the levee is not right on the edge of the river.  
20 Partly it helps for access to the levee on both sides to  
21 have access along both sides.

22 BOARD MEMBER RIE: But it's not a requirement.

23 CHIEF ENGINEER BRADLEY: It is not a requirement.  
24 But in this case it's very difficult to have the access on  
25 the land side because of the homes in that area.

1           PRESIDENT CARTER: I do know that from -- in  
2 personal experience where I live, the DWR maintains the  
3 levee that goes through our property. And every year they  
4 take a bulldozer down the waterside toe of the levee,  
5 essentially creating a path there of bulldozer width,  
6 which is probably about 10 to 12 feet. So they do  
7 maintain waterside toe access along that stretch of the  
8 river, which is probably about 20 miles.

9           PROJECT MANAGER KERR: Were there any more  
10 questions for the staff?

11          VICE PRESIDENT HODGKINS: I noticed that your  
12 presentation said the Corps is only supporting one  
13 alternative. Can you clarify for me what that means?  
14 Does that mean if any other alternative were to be  
15 selected as a locally preferred alternative, the Corps  
16 would not participate in the project?

17          ENVIRONMENTAL SCIENTIST BRONSON: That's what  
18 they have said.

19          VICE PRESIDENT HODGKINS: That makes it pretty  
20 simple.

21          BOARD MEMBER RIE: Well, how much of the funding  
22 is coming from the Corps?

23          ENVIRONMENTAL SCIENTIST BRONSON: Seventy-five  
24 percent.

25          PROJECT MANAGER KERR: Yeah we pay -- the state

1 pays 17.5 percent and SAFCA pays the other 7.5 percent.  
2 And SAFCA had a meeting yesterday where they heard this  
3 issue and they were presented the case that the Corps has,  
4 you know, preference in one alternative. I believe that  
5 SAFCA's pronouncement was they will support the Corps.

6 And we'll be bringing this to you in November to  
7 give you that choice, to proceed with the project and the  
8 Corps's preferred alternative and certify environmental  
9 document or to make some other decision.

10 PRESIDENT CARTER: We do have a couple members of  
11 the public that would like to speak. And we can come back  
12 to you all with questions.

13 But, Mr. O'Connor.

14 MR. O'CONNOR: Mr. Morgan first.

15 PRESIDENT CARTER: Mr. Morgan.

16 (Thereupon an overhead presentation was  
17 Presented as follows.)

18 MR. MORGAN: Thank you. I appreciate the  
19 opportunity to address the Board today.

20 My name is Jim Morgan and I'm with the  
21 Butterfield-Riviera East Community Association, generally  
22 abbreviated BRECA. And we have been working on this  
23 project practically since our inception, which was nine  
24 years ago. I personally took a week-long trip to  
25 Washington DC in 1998. And the following year the

1 project -- the Mayhew project was authorized. And it's  
2 been a long haul.

3 We have, you know, really supported moving  
4 forward with the project. We believe we do need this  
5 increment of flood protection and that is our top  
6 priority.

7 At the same time, we desire to minimize by any  
8 and all means that are feasible the impacts on the  
9 American River Parkway, which is a naturalistic open space  
10 and recreation area which is treasured by all of  
11 Sacramento and especially by our neighborhood.

12 Previously there had been discussions specially  
13 focusing around three large Heritage Oak trees. And there  
14 had been proposals first by the Corps of Engineers to use  
15 a flood wall to protect those trees. And then later on  
16 when that was controversial in our community, SAFCA came  
17 along and proposed a screen flood wall in that area. And  
18 they told us the Corps of Engineers was supportive of that  
19 proposal.

20 And so it came as a great shock to us when we  
21 started hearing at the beginning of this year that the  
22 Corps might not support that proposal and, finally, later  
23 on towards the end of summer when they just said, flat  
24 out, "No, we're not going to support that."

25 Evidently there has been a substantial change in

1 the position of the Corps of Engineers recently on that  
2 situation. And we're very disappointed by that. I  
3 personally find it very difficult to believe that the best  
4 flood control solution we can find is plain old piled  
5 compacted dirt, especially in view of the fact that in New  
6 Orleans the inverted T-type flood walls held out better  
7 than anything else did. But I'm just pessimistic about  
8 changing the Corps's viewpoint on that, to put it mildly.

9 At any rate, I did want to point out one thing  
10 here. There is a document which is on the Reclamation  
11 Board website, which is this one here.

12 --o0o--

13 MR. MORGAN: It's called a Plan Selection Report.  
14 I don't know, have you had a chance to review that at all,  
15 or is that -- I guess not.

16 Okay. That means I get to criticize it before  
17 you've even read it.

18 It has a number of some important things in it,  
19 which go some ways towards explaining the Corps's thinking  
20 on this. It also has a number of significant errors in  
21 it. For example, on page 2 it says that the initial  
22 community rejection of the Corps's initial proposal, the  
23 initial proposal would have taken 20 feet of parkway.  
24 Well, that's totally inaccurate. The initial proposal  
25 would have taken about 60 feet of the parkway.

1           And then subsequently on page 33 it says, "The  
2 present project would take, at most, 23 feet of the  
3 parkway. Actually it's more like 40 feet. And I have  
4 plan drawings which the Corps prepared back in 2002 for  
5 us. And I can demonstrate that to you if any of you are  
6 particularly interested in that.

7           But just to bring to your attention that when you  
8 do a get around to reading this document, there are  
9 significant errors and omissions in it, and take it with a  
10 grain of salt when you do get there.

11           Nonetheless, in terms of your being asked to  
12 consider this project and to give some direction to your  
13 staff, our recommendation is the most important direction  
14 is to keep the project moving and to take advantage of the  
15 funding which finally appears to be available for next  
16 year and to move the construction next year. And,  
17 secondarily, to take every opportunity to minimize the  
18 environmental damage to the parkway that is consistent  
19 with maintaining the reliability of the project.

20           And so that's my comments. Thank you.

21           Any comments or questions there?

22           PRESIDENT CARTER: Any questions for Mr. Morgan?

23           Thank you very much.

24           Mr. O'Connor.

25           MR. O'CONNOR: I'm Joe O'Connor. I'm with the

1 Butterfield-Riviera East Community Association. And I  
2 just wanted to mention that no one wants anything short of  
3 full flood protection. We've been trying to get it for  
4 nine years. We also know where the 800 pound gorilla  
5 sits.

6 I wanted to address the document that Jim had  
7 mentioned, and that's the one you all have. It's the  
8 report on the selection. It refers with regards to  
9 placement of trees by levees and flood walls. As  
10 mentioned, there's reference to an engineering manual and  
11 a FEMA manual.

12 The FEMA manual is actually one that refers to  
13 dams and not levees. However, there's a chart in there  
14 that has to do with root balls and the extent of the root  
15 system depending on the size of the tree. And that is all  
16 new information to us.

17 But I do want to point out that if the same  
18 criteria that is being applied from those two references  
19 as it was explained to us by the Corps of engineers was  
20 also applied to the rest of the parkway and the rest of  
21 the system here, it's going to the rest of the dams and  
22 flood walls and all, it's going to have a significant  
23 impact. And the Corps would have to start decertifying  
24 levees. They'd have to start cutting down a lot of trees  
25 in the parkway, and there would be a lot of work. So



1 you'd have to realize that in understanding this new  
2 criteria and the new impact it might have if applied the  
3 same way they're trying to apply it to the -- to this  
4 small, kind of low Mayhew levee.

5           With regards to the oak trees and how stable they  
6 are in ground work and all that -- I'm from New Orleans.  
7 It occurs to me that we just had this big hurricane last  
8 year. New Orleans is full of oak trees, as is New Orleans  
9 City Park. So we could get some information with regards  
10 to the stability of large oak trees in high winds, like  
11 the hurricanes and tornados that accompanied Katrina. And  
12 so I called the botanist, the guy that's -- the man that's  
13 in charge of restorations in the parkway, to find out what  
14 happened to the trees.

15           There are about 14,000 trees in city park, which  
16 is three miles long, one mile wide. Of that 14,000, 2,300  
17 are Live Oak trees. The total trees toppled in the storm  
18 and flood, two feet to eight feet of water in the park,  
19 was 2,000 trees toppled. Of those, 30 were Live Oaks --  
20 30 Live Oaks were toppled. No old grove Live Oaks were  
21 toppled.

22           If you look at the total number of trees toppled,  
23 it comes out to 14.4 percent. Of the Live Oaks toppled,  
24 it comes out to 1.3 percent. Some of those had some root  
25 damage because they have picnic areas around and things

1 like that, according to the arborist. The arborist said  
2 that oak trees are very wind resistant. And it kind of  
3 gives you a little bit of an idea.

4           With regards to flood protection, the Corps has  
5 six alternatives in their document and EIR. Actually  
6 there are only three alternatives that anyone is  
7 interested in. And that is the levee that has a short  
8 section of flood wall to protect the three oak trees and  
9 elderberry bush and some of the parkway. The rest of the  
10 parkway would have our proposal with a, say, 2-to-1  
11 riverside slope to save about another acre of parkway,  
12 stabilizing the geogrid internally in layers to make it as  
13 stable as or more stable than the 3-to-1. And we have  
14 checked into that as well.

15           The other one is the short flood wall with the  
16 full levee for the rest of the way.

17           And then the third would be the one that the  
18 Corps is proposing as their alternative -- preferred  
19 alternative at this time, which is the full levee the  
20 entire way.

21           With regards to flood walls, I have here the IPAT  
22 report from a Katrina study in New Orleans. One is the  
23 executive summary, the other is Chapter 5 of the IPAT  
24 report. This is an interagency study. It was released in  
25 June 2006. The one thing it shows in here is that -- it

1 studied, incidentally, 50 failures around the New Orleans  
2 area -- 50 sites of failure, due to overtopping, erosion,  
3 and undermining of the flood protection systems.

4           The standard levees and the I-walls failed. All  
5 50 of these sites are standard levees or I-walls. T-walls  
6 did not fail in the system. T-walls were shown to be --  
7 if properly engineered, T-wall is a very safe system. It  
8 is T-walls that we have proposed for this particular levee  
9 site.

10           The other thing has to do with the use of geogrid  
11 to stabilize the slope. I've done -- we tried to get the  
12 Corps of Engineers engaged in this. But somewhere along  
13 the line of having six project managers in five years,  
14 about around the third one there became a disconnect and  
15 it was kind of hard to communicate with the Corps again,  
16 we wanted them to address it. So I called around -- I had  
17 to do some research. I called around the country,  
18 Florida, Richmond, Baltimore, and New Orleans, having to  
19 do with their experience with geogrid. Florida had the  
20 most experience, as did New Orleans. And their  
21 professional judgment, the tests they did and things like  
22 that supported the use of geogrid.

23           At each contact where they actually had  
24 experience with it, I asked about stability and I asked  
25 about geogrid possibly making a seepage path. And then

1 each time they confirmed or at least in their judgment an  
2 experience, it did not allow that to make it stable and it  
3 did not have a seepage path.

4           We also contacted local engineering companies  
5 that are actually building levees. And Mr. Morgan paid  
6 one of them to run the calculations since we couldn't get  
7 the calculations done by the local Corps, just a computer  
8 program that iteratively runs until it calculates safety  
9 factors and all that. And it confirmed that geogrid will  
10 stabilize a levee to the level at least as good as a  
11 3-to-1 slope.

12           I also visited New Orleans --

13           PRESIDENT CARTER: Mr. O'Connor, if you could  
14 wrap up.

15           MR. O'CONNOR: About two seconds.

16           -- visited the Corps of Engineers, talked with  
17 chief geotech engineer there, and he thought the system  
18 was -- you know, the idea of use of geogrid is very good.

19           I want to repeat, no one wants a levee that is  
20 weaker than the full standards, you know, that you can  
21 achieve in other ways.

22           Any questions?

23           PRESIDENT CARTER: Any questions for Mr.  
24 O'Connor?

25           MR. O'CONNOR: Incidentally, we're available --

1 if anyone wants to call us or anything like that or  
2 discuss anything, check any of the information, we'd be  
3 glad to do it.

4 PRESIDENT CARTER: Thank you.

5 Okay. I don't have any more cards on this.

6 Board have any comments, any questions of either  
7 the public, staff?

8 Butch.

9 VICE PRESIDENT HODGKINS: Yeah, I wonder if SAFCA  
10 has a representative who could tell us what the SAFCA  
11 Board did yesterday, since it did something.

12 PROJECT MANAGER KERR: Tim Washburn's here from  
13 SAFCA, and he actually just offered to come and give a  
14 couple words.

15 MR. WASHBURN: Thank you.

16 Mr. Carter, members of the Board. Tim Washburn.  
17 I'm the agency counsel for SAFCA.

18 We did bring a matter to the board yesterday, a  
19 resolution. As we have done many times in the past in the  
20 course of the American River watershed investigation, we  
21 wanted to clarify what the local position was with respect  
22 to the project pending completion of the environmental  
23 review process. And we indicated in this resolution that  
24 our board was prepared to participate as the local sponsor  
25 in the federally sponsored plan, and whatever variant that

1 might be based on what the Rec Board decides to do. So we  
2 were signaling to you that we're prepared to go forward  
3 with what the Corps recommended, as the local sponsor,  
4 contingent upon whatever variation on that recommendation  
5 you might decide is appropriate.

6           So we're going to be your local sponsor  
7 contingent upon completing the environmental review  
8 process and of course your decisions on what you may want  
9 to do reacting to the Corps's identification of the  
10 federally recommended plan.

11           VICE PRESIDENT HODGKINS: Thank you.

12           PRESIDENT CARTER: Teri.

13           BOARD MEMBER RIE: I have a question for Tim --  
14 Tim Kerr.

15           MR. WASHBURN: Yes.

16           BOARD MEMBER RIE: No, Tim Kerr.

17           MR. WASHBURN: Oh, sorry about that.

18           BOARD MEMBER RIE: Sorry.

19           PROJECT MANAGER KERR: Yes.

20           BOARD MEMBER RIE: The levee is almost a mile  
21 long. Why can't we integrate different solutions? Why  
22 can't we have the T-wall next to the oak trees and then go  
23 with the dirt levee through the rest of the --

24           PROJECT MANAGER KERR: That's the alternative  
25 that we've been studying for the past year actually, is

1 how to try to find a way -- you know, with our best  
2 engineering possible, if we could design a design that  
3 integrates flood walls and earthen levees intermingled  
4 together and say that it is satisfactory as a standard  
5 levee. And after studying for a year we just couldn't say  
6 that. We didn't come to the conclusion that it was as  
7 good as a standard levee. And it didn't -- it wasn't even  
8 close enough for us to go with that alternative, because  
9 you start getting inconsistencies and discontinuities in  
10 your design, it makes for much more complexities of  
11 construction and quality control, there's much more error  
12 that propagates through the design and safety factors that  
13 have to be considered when you start transitioning from  
14 one type of design to the next type of design methodology  
15 or construction methodology.

16           And it just brought up too much variability and  
17 question in our design that basically took away from our  
18 confidence in the design.

19           Also, we have to remember that between tree eight  
20 and the property line it's 47 feet. T-walls in New  
21 Orleans -- I'm not an expert, but I imagine they probably  
22 got a lot more real estate to work with between, you know,  
23 the -- what they're trying to protect and the water. And,  
24 you know, there might be trees. And in our case it would  
25 be just too close to the flood control feature to really

1 have any confidence that it was going to hold during a  
2 flood event that we're trying to design for.

3 BOARD MEMBER RIE: And did you look at putting in  
4 a T-wall and then burying it with dirt?

5 PROJECT MANAGER KERR: Yeah, that was the  
6 alternative. It was the -- had the most chance of  
7 success. It was a T-wall with an earthen screen on the  
8 waterside to prevent anybody from falling off of it or to  
9 prevent graffiti and the aesthetic, you know, impacts of  
10 you don't see the concrete in a nice, you know, riverine  
11 situation. We felt that concrete and the graffiti that  
12 would probably wind up on it was quite an impact to  
13 consider.

14 But the best alternative with the flood wall was  
15 one that actually had the earth screen on the waterside  
16 and the patrol road behind it on the land side. But  
17 within that 47 feet the patrol road was getting  
18 compromised down to around a 12-foot width. I think we  
19 had one alternative that was getting up to about a 16-foot  
20 width patrol road. But it added a retaining wall on the  
21 land side, which was just one more feature that adds  
22 complexity to the design and more risk and uncertainty.

23 SECRETARY DOHERTY: When the road on the land  
24 side reduced from 12 feet to 10 feet, is that because of  
25 encroachment of people's fences, or their actual property



1 lines?

2 PROJECT MANAGER KERR: Initially we had a  
3 20-foot-wide landside easement at the toe, and we decided  
4 that we could have some flexibility there and we reduced  
5 it to 10 feet because that's what's usually required for  
6 inspections and whatnot. But the patrol road where the  
7 floodfight crews and the levee maintenance crews operate,  
8 we really don't want to go below 20 feet on a major  
9 tributary. That would require a variance of our  
10 standards. So we really wanted to stick with a  
11 20-foot-wide patrol road. So the levee crown is basically  
12 your patrol road. And then down at the toe on the land  
13 side is for inspection access and other floodfighting  
14 necessities.

15 SECRETARY DOHERTY: But what I'm asking is -- you  
16 said it went from 12 feet down to 10 feet. Was that  
17 because of encroachment by the property owners in the  
18 area?

19 PROJECT MANAGER KERR: I might be confused. I  
20 don't really remember saying it went from 12 to 10. I  
21 think perhaps what I was discussing was, in an interim  
22 design phase as we were laying out the project, we were  
23 looking at a patrol road behind the flood wall. And we  
24 wanted it to be 20 feet, but it kind of went down to 12  
25 feet because of the 47-foot limitation we had to build the

1 project, and the flood wall was having to be moved away  
2 from the tree. That was the main impact to the fee  
3 availability for patrol roads. We had to keep moving the  
4 flood wall further away from the tree to ensure the tree  
5 would survive.

6           The encroachments from the landowners on the  
7 county's land isn't very significant. I think that's on  
8 the order of -- some fences it might be about a foot into  
9 the county's land. But we can design the project, you  
10 know, based on the county property line.

11           And so I don't think that the encroachments were  
12 a factor.

13           SECRETARY DOHERTY: All right. That's what I  
14 wanted to know. Thanks.

15           PROJECT MANAGER KERR: Thank you.

16           PRESIDENT CARTER: RoseMarie, do you have any  
17 questions?

18           BOARD MEMBER BURROUGHS: (Ms. Burroughs shakes  
19 head.)

20           VICE PRESIDENT HODGKINS: I have one question for  
21 Tim.

22           Tim, I think I heard you say, actually pretty  
23 clearly, that the state engineers agree with the Corps  
24 that you couldn't bring the other alternatives to the  
25 standard that made them close enough even to being equal

1 to the standard levee.

2 PROJECT MANAGER KERR: Yeah, that's my position.

3 And as a staff report next month when I take it to you for  
4 a decision, that's going to be my position.

5 VICE PRESIDENT HODGKINS: Okay.

6 PROJECT MANAGER KERR: I haven't ran that up the  
7 chain for endorsement by my management, so I can't speak  
8 for my management. But as the staff who spends the most  
9 time, me and Annalena, for the state on this project,  
10 that's the way I'm leaning because of all the details that  
11 I see at my level.

12 VICE PRESIDENT HODGKINS: All right.

13 I wonder if SAFCA's engineer, Mr. Ghelfi, would  
14 tell us what his opinion is.

15 BOARD MEMBER RIE: Before he gets up, is there a  
16 plan for mitigation of the trees?

17 PROJECT MANAGER KERR: There certainly is. We  
18 are setting up a large mitigation area that's outside the  
19 designated floodway where we will have continuity with our  
20 mitigation with other common features, projects, and the  
21 Folsom Dam projects. This way it will be kind of linked  
22 habitat, and we get an economy of scale for the  
23 development mitigation site. It's called Goethe East  
24 Mitigation Site. It's separate from the transplants. We  
25 will transplant all of the trees that we possibly can from

1 the project footprint out a little closer to the river  
2 on-site so that an existing habitat is disturbed as  
3 minimally as possible. But over at the Goethe East site  
4 we'll be planting I believe about 4,000 oak saplings as  
5 the associated native plants that are required for  
6 elderberry mitigation.

7 And I believe that the Mayhew effort is going to  
8 require about 10 or 12 acres total of habitat mitigation.

9 MR. GHELFI: Good morning. Pete Ghelfi, Director  
10 of Engineering for SAFCA.

11 Board Member Hodgkins, could you ask your  
12 question one more time so I can respond appropriately?

13 VICE PRESIDENT HODGKINS: The Corps and the Rec  
14 Board's engineer on this project have both said that in  
15 their opinion the alternatives couldn't be brought around  
16 to the point where they provided the same level of  
17 protection or close enough to the same level of protection  
18 as the standard project levee. And so in effect state  
19 engineers are recommending along with the Corps that we  
20 not consider a more environmentally sensitive alternative.

21 I'm asking you as an engineer what your opinion  
22 is.

23 MR. GHELFI: To help clarify, I think what the  
24 Corps had said is that they didn't carry forward enough a  
25 design that they would have been able to certify. There

1 was concerns associated with the tree. And in order to  
2 come with a program that they could certify, it may have  
3 involved taking private property.

4           They also stopped doing their cost estimation on  
5 what it would take to get the project a certifiable  
6 feature using a flood wall design. And that where they  
7 stopped on the economics was a project -- I'm going to be  
8 conservative on this -- at least a half a million dollars  
9 more in cost to build a flood wall that would be  
10 certifiable. They were thinking that it could go up to a  
11 range of about a million dollars more in project costs.  
12 The Corps was not going to support selecting that type of  
13 alternative. They would have tried to turn that into a  
14 betterment, stating -- they gave an indication that they  
15 weren't willing to accept that type of a cost as a  
16 betterment.

17           SAFCA, based on our limited funding, would not be  
18 willing to step forward for that additional cost. And so  
19 we stopped pursuing what would the actual design consist  
20 of that the Corps could certify that would have a flood  
21 wall.

22           VICE PRESIDENT HODGKINS: Okay. I think that  
23 that's helpful to me because in effect it says there were  
24 economics here that really drove this as much as public  
25 safety criteria. And I think that helps to make it a

1 little easier.

2 Thank you.

3 MR. GHELFY: Yeah, just to add one more thing.

4 The Corps really had a great concern what they learned in  
5 New Orleans about transitions. They have numerous  
6 photographs of where at a transition point the levee  
7 system failed. And so that weighted heavily on them in  
8 their decision.

9 PRESIDENT CARTER: Okay. Ladies and gentlemen,  
10 at this point the task before us is if you have any policy  
11 guidance on the project for staff, now is the time. Any  
12 thoughts that you haven't already expressed?

13 BOARD MEMBER BURROUGHS: Could we relay those  
14 after lunch?

15 PRESIDENT CARTER: We could.

16 Would you like to think about it over lunch?

17 BOARD MEMBER RIE: Are we required to do anything  
18 at this point?

19 PRESIDENT CARTER: No. No, just if you have any  
20 policy comments, guidance, you could offer them now.

21 SECRETARY DOHERTY: Tim?

22 PROJECT MANAGER KERR: Yes.

23 SECRETARY DOHERTY: The recommendations from the  
24 Department are in this material, correct?

25 There's numerous -- we went out and looked at

1 this site, and there were numerous suggestions and there  
2 were numerous suggestions from the Association of  
3 Homeowners and whatnot.

4 Now, are you going to next month ask us to with  
5 the information we have make a decision?

6 PROJECT MANAGER KERR: You will be receiving new  
7 information. The Plan of Selection appendix that we  
8 distributed to you two weeks ago was just a draft working  
9 copy. And it's already received updates and revisions  
10 since that time. Hopefully we caught some of the errors  
11 that Jim pointed out. It was just to kind of give you a  
12 heads-up. I wanted to give you as much information as I  
13 could at an early enough time to -- you know, to help you  
14 digest some of the developments on this project and then,  
15 you know, to prepare you for this decision I'll be  
16 requesting from you in November.

17 So the first week in November we'll have a final  
18 EIS/EIR out. And it will actually have listed all of the,  
19 you know, transcripts from previous Rec Board meetings and  
20 SAFCA meetings and public meetings, and our responses to  
21 all the statements that were made and the comments -- the  
22 official comments that we received during the comment  
23 period.

24 So it will be a complete document around -- the  
25 first week of November is our target milestone. What you

1 have there --

2 SECRETARY DOHERTY: We just got -- I just got  
3 this. What's this?

4 PROJECT MANAGER KERR: Okay. Annalena gave you  
5 that one. That is the latest version of that document so  
6 that is the latest version. And I don't believe that  
7 there should be changes in that one by November 1st. I  
8 think that could possibly be the final version.

9 SECRETARY DOHERTY: Okay.

10 ENVIRONMENTAL SCIENTIST BRONSON: That's just to  
11 clarify -- I'm Annalena Bronson again. That's just an  
12 appendix that's going to be appended to the final EIS/EIR  
13 that goes -- where the Corps kind of went through their  
14 reasoning behind their decisions. And I wanted you to  
15 have that ahead of time so you had some time to digest it.  
16 But it's only a small portion of the final EIS/EIR that  
17 you're going to get next month.

18 SECRETARY DOHERTY: All right. Thank you,  
19 Annalena.

20 BOARD MEMBER BURROUGHS: Mr. President, I do have  
21 one comment.

22 PRESIDENT CARTER: Go ahead.

23 BOARD MEMBER BURROUGHS: I think it's important  
24 that -- as policy, that we have information presented to  
25 the Board well in advance to be able to make a decision at



1 the time that you're asking for the Board to make a  
2 decision.

3           So if there is more information -- and I know  
4 that it's difficult to gather documentation; and if it's  
5 not ready, then your hands are tied. But if there is --  
6 and this would be for all decisions that come before the  
7 Board -- we need to have the information presented to the  
8 Board as soon as possible.

9           PROJECT MANAGER KERR: I hear you loud and clear.  
10 And I'll give it my best effort possible to get you  
11 everything I can.

12           BOARD MEMBER BURROUGHS: Thank you.

13           PROJECT MANAGER KERR: Okay. I'll leave it at  
14 that.

15           VICE PRESIDENT HODGKINS: I do have a question of  
16 state staff. I think you're saying you wouldn't recommend  
17 that the Rec Board participate in betterment. But I guess  
18 I'm asking for clarification.

19           Who makes that decision?

20           STAFF COUNSEL MORGAN: Who makes the decision --  
21 would you repeat the option you're asking about.

22           VICE PRESIDENT HODGKINS: As I heard Mr. Ghelfi,  
23 what he said was for somewhere between a half a million  
24 and a million more it might be possible to make the flood  
25 wall equal to the full levee. But state staff indicated

1 that state staff would not support -- the Rec Board -- the  
2 Corps would only allow that approach if the additional  
3 cost were paid total by the non-federal sponsor.

4           It sounds like state staff said they would not  
5 recommend that the Board participate in that additional  
6 cost. And then as a result of that, SAFCA said, "Well, we  
7 can't afford to take on the entire million dollars worth  
8 of cost."

9           So I'm just asking whether the Board in effect  
10 could entertain whether we would be willing to pay 50  
11 percent of the cost betterment if there was one?

12           STAFF COUNSEL MORGAN: No. The Board is going to  
13 be limited in what its participation can be. The  
14 Legislature has approved the project. And there are cost  
15 allocations between the state, the federal government and  
16 the local sponsor. And if somebody wants a betterment,  
17 the Corps will -- you know, may permit that. But that  
18 cost has to be borne by the local agency that wants the  
19 betterment.

20           The Legislature -- if the legislature wanted the  
21 betterment, the Legislature would have to appropriate  
22 funds for that.

23           VICE PRESIDENT HODGKINS: Okay. Thank you.

24           PRESIDENT CARTER: Okay. It appears that that's  
25 about all the guidance you're going to get today. So

1 we'll look forward to the staff report in November.

2 PROJECT MANAGER KERR: Well, thank you very much.

3 I look forward to coming back in November.

4 PRESIDENT CARTER: Thank you.

5 Okay. This meeting -- it's the noon hour or a  
6 little after. So we will break for an hour.

7 We'll be back here at a quarter after 1 -- or  
8 actually that's 20 after 1.

9 (Thereupon a lunch break was taken.)

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1 AFTERNOON SESSION

2 PRESIDENT CARTER: Good afternoon, ladies and  
3 gentlemen. I trust you all had a good lunch. Let's  
4 reconvene our meeting.

5 We had finished up, as you recall, Item 10,  
6 Project or Study Agreements.

7 There are no property management issues, no  
8 enforcement issues, under Item 11 and 12.

9 So we are on Item 13, Applications, specifically  
10 13A, Application No. 18046, Castle Principles, LLC,  
11 Sacramento County:

12 Consider approval of Application 18046 requesting  
13 an encroachment permit to install a storm drain pipe  
14 through the levee and construct two access ramps, place  
15 fill along the landward toe of the levee, and place 2,0000  
16 linear feet of aggregate base on the crown of the Colusa  
17 Basin Drain levee.

18 This item was continued from our July -- was it  
19 our July meeting or was it our last -- no, it wasn't July.

20 FLOODWAY PROTECTION SECTION CHIEF MIRMAZAHERI:  
21 July and September.

22 PRESIDENT CARTER: Oh, yes, the September  
23 meeting. So a correction on the agenda there.

24 So with that, Mr. Mirmazaheri.

25 FLOODWAY PROTECTION SECTION CHIEF MIRMAZAHERI:

1 Good afternoon.

2 PRESIDENT CARTER: Good afternoon.

3 FLOODWAY PROTECTION SECTION CHIEF MIRMAZAHERI: I  
4 hope you all had a good lunch.

5 For the record, Mike Mirmazaheri, Department of  
6 Water Resources. And this is item 13A, Castle  
7 Development, Application 18046.

8 Just briefly go over the application content to  
9 refresh everyone's memory. Applicant has requested  
10 authorization from the Board an encroachment permit to:

11 1. Install storm drain pipe through the levee of  
12 the Colusa Basin Drain near the south levee on that.

13 2. Construct two access ramps to the levee  
14 crown.

15 Item 3 on the application is place fill along the  
16 landward toe of the levee.

17 And the fourth item is -- applicant is requesting  
18 authorization to do is to place 2,000 linear feet of  
19 aggregate base on the levee crown of the south levee of  
20 Colusa Basin Drain.

21 The above work is an effort for construction of a  
22 new subdivision consisting of 63 homes in the area. On  
23 July 21st, the staff presented this application, and then  
24 again in September 15, 2006, this last meeting, the staff  
25 brought the application back. And both July and September

1 there was some discussions. There was no decision made by  
2 the Board. So that's why this application is back to the  
3 Board today.

4           July 21st, that meeting, the recommendation that  
5 the staff made was contingent to having an entity  
6 accepting the responsibility to maintain the levee. There  
7 was a portion of the levee that is not being maintained  
8 and there is no responsible local maintaining agency. And  
9 staff recommendation was to approve the draft permit that  
10 was submitted in July contingent on having an entity  
11 accept the responsibility.

12           And the staff report that I submitted also stated  
13 that the backfilling against the landside slope of the  
14 levee would enhance the levee section and may reduce the  
15 flood risk, and also stated that applicant is willing to  
16 grant easement to the Reclamation Board.

17           I included the original staff report, which was  
18 presented in July as an Attachment A to your package. And  
19 you should have it before you.

20           July -- on September 15, came back to the Board  
21 and reported that Department of Water Resources pursuant  
22 to Water Code Section 8761 has agreed to form a  
23 maintenance area. The Board continued discussion on this  
24 application. And after some discussions on mainly two  
25 items, it was decided to table that for this meeting.

1           The two items that was main point of discussion  
2 by the Board in September, one was a desire for the  
3 applicant to voluntarily conduct for the depth study,  
4 assessing potential risk of inundation proposed  
5 residential area should any of the surrounding levees  
6 fail. So in other words, this was a point of discussion.  
7 And, again, there was no motion passed or any decision was  
8 made at the time.

9           The second item that was a point of discussion in  
10 September was a request for the staff to confirm that the  
11 Army Corps of Engineers have no concerns regarding  
12 potential underseepage in the project area.

13           What I'll do now is I'm going to report to you  
14 the progress that's been made since the September meeting  
15 and what information -- new information we have and what  
16 we don't have.

17           As far as a flooding study and the desire the  
18 applicant to initiate the study and do an assessment in  
19 case of levee failure in the area, I do not have any new  
20 information. So I have not received any type of analysis  
21 or study as was discussed back in September.

22           On the second item in terms of geotechnical  
23 concerns, I contacted the Corps of Engineers again and  
24 received a confirmation from them. And they have no other  
25 comments on the original comments that is submitted back

1 in May. And that is in Attachment B to the package -- the  
2 staff report that you have before you. It's an e-mail  
3 from Bob Murakami. And Bob has consulted with Henri  
4 Mulder, who is a geotechnical staff at the Corps. And the  
5 Corps has done that.

6 I appreciate the work that the Corps has done to  
7 double check with the geotechnical staff and come back to  
8 us, knowing that it's not their obligation to do any  
9 technical review for us, do technical or not. So I think  
10 that needs to be recognized.

11 Also, DWR Maintenance staff had a chance to  
12 review the proposed project and provide us some comments.  
13 Their comments is in Attachment C of the package that I  
14 submitted to you.

15 DWR Maintenance staff also took time, they made  
16 some revisions to the original draft permit that was  
17 submitted in July. And what I'll do is I will kindly ask  
18 Ms. Buford to give a copy of their revisions that I  
19 received yesterday from them to you.

20 Thank you, Lori.

21 If you decide to approve the project, then these  
22 are the revisions that are proposed to the original permit  
23 that was part of the package on July 21st.

24 The fourth one is we have received -- the Board  
25 has received a letter dated October 4th from Morrison



1 Foerster, as the legal firm, concerning this application.  
2 That is also as an attachment. It is in your package as  
3 Attachment D. And in response to that, Mr. Punia, General  
4 Manager, has sent them a letter, and that is Attachment E.

5 One last thing is, staff reported that Castle  
6 Development has started some grading activity in the area.  
7 I sent one of my staff out there to do an inspection, and  
8 wanted to make sure that the work that they are doing is  
9 not within the easement -- within the easement of the  
10 Reclamation Board. The report that I received back from  
11 my staff is that it appears that is the case and they are  
12 outside of the easement.

13 So they have started grading the area that the  
14 subdivision is actually -- or the new homes are supposed  
15 to go.

16 SECRETARY DOHERTY: May I understand. They're  
17 not grading on the levee; it's the area where the pads are  
18 being constructed, correct?

19 FLOODWAY PROTECTION SECTION CHIEF MIRMAZAHERI:  
20 That is correct. That's the report that I received from  
21 my staff after he visually inspected the area, yes. In  
22 his opinion, they did not work -- they did not encroach  
23 into the easement.

24 SECRETARY DOHERTY: Right.

25 FLOODWAY PROTECTION SECTION CHIEF MIRMAZAHERI:

1 Just a point of discussion or a reminder, that before July  
2 21st the reason that this application was presented to the  
3 Board on July 21st to begin with was because there was no  
4 local maintaining agency responsible for the maintaining  
5 of that reach of levee. Staff did not have any technical  
6 issue with what was proposed to be done within the  
7 easement of the Reclamation Board.

8           So staff recommendation pretty much remains --  
9 I'm sorry -- pretty much remains the same. And the staff  
10 do not have any objections to the proposed project, and  
11 believes that all technical issues related to work  
12 proposed within the Board's easement have been addressed  
13 by the applicant.

14           The staff also believes that comments made by the  
15 Department of Water Resources Maintenance staff are  
16 important and need to be met by the applicant. And that's  
17 what I just provided to you.

18           And the revisions that you have before you if you  
19 decide to approve this project should be, in my opinion,  
20 as part of the permit and --

21           SECRETARY DOHERTY: So that's this paper right  
22 here?

23           FLOODWAY PROTECTION SECTION CHIEF MIRMAZAHERI:  
24 Yes, that's the one I'm talking about should be.

25           And the original permit, that again is in

1 Attachment A, the original draft, this revision should go  
2 to us.

3           So what I'm asking is, if the Board decides to  
4 approve this project, then those revisions and finalizing  
5 the draft permit should be delegated to staff until after  
6 the staff can basically finalize it, go on -- if the  
7 decision at the end of the day is in favor of the project.

8           And I think I'm done with my update at this  
9 point. And if there are any questions, I'm available.

10           Noel Lerner, also from Maintenance staff, is here  
11 to answer any questions regarding the progress that DWR  
12 has made in formation of the maintenance area.

13           And I know applicant is available, which he may  
14 want to make some remarks.

15           SECRETARY DOHERTY: I have a couple questions.

16           FLOODWAY PROTECTION SECTION CHIEF MIRMAZAHERI:  
17 Sure.

18           SECRETARY DOHERTY: I missed. Who is taking  
19 responsibility for this levee now?

20           FLOODWAY PROTECTION SECTION CHIEF MIRMAZAHERI:  
21 As far as maintenance, DWR has committed itself to form a  
22 maintenance area.

23           SECRETARY DOHERTY: All right. And, Mr. Boatman,  
24 you at one time said you were willing to do the work to  
25 bring the levee up to the standard that the maintaining

1 agency would accept. Now, this is what the maintaining  
2 agency will accept; is that correct?

3 FLOODWAY PROTECTION SECTION CHIEF MIRMAZAHERI:

4 That is a revision that they have made to the original  
5 draft permit. And their comments is part of the package  
6 and I believe is Attachment C.

7 Yes. So a combination of those, correct.

8 SECRETARY DOHERTY: So I want to make sure I  
9 understand.

10 Castle will bring it up to the standard that is  
11 acceptable to DWR, correct?

12 FLOODWAY PROTECTION SECTION CHIEF MIRMAZAHERI:

13 That's a commitment the applicant has to make.

14 SECRETARY DOHERTY: Okay. That's what I want to  
15 know.

16 MR. BOATWRIGHT: That is correct. There is some  
17 discrepancy between --

18 PRESIDENT CARTER: Mr. Boatwright, could you just  
19 introduce yourself to the record.

20 MR. BOATWRIGHT: Oh, I'm sorry. Dan Boatwright  
21 with Castle Principles, the applicant.

22 That is correct. We are committed to bringing  
23 the levee up to the state DWR standards. There is a  
24 little bit of a discrepancy between what DWR said they  
25 wanted and what staff initially said. We had told staff

1 that we initially would not remove the trees on the  
2 waterside of the levee, that we would put goats in there  
3 to graze down so that they could see the levee. Would not  
4 remove the big oak trees. However, it appears that DWR's  
5 most recent condition, they want all the vegetation  
6 removed. So I think we'd have to work out -- whatever  
7 they want is what we would do.

8 SECRETARY DOHERTY: All right. Thank you.

9 FLOODWAY PROTECTION SECTION CHIEF MIRMAZAHERI:  
10 The Board agrees I think Noel can explain what the  
11 standard would be when DWR takes over the responsibility,  
12 and because I think it's important to understand what  
13 grading to standard means. And there is an area of  
14 confusion out there.

15 SENIOR ENGINEER LERNER: My name is Noel Lerner.  
16 I'm Chief of the Maintenance Support Branch.

17 And the amendments that are noted on the permit  
18 with special conditions reflect comments on the drawings  
19 as shown in the applicant. And the changes we need in  
20 terms of access easements and a detail on the eight --  
21 discharge of the eight-inch water. It doesn't address  
22 what it means to bring it up to standards. Because what  
23 is required in terms of this levee -- this levee was a  
24 little unique in that it wasn't constructed by the Corps.  
25 It was taken into the project as existing, as it was, as

1 built by others. And there are no designs, so we don't  
2 bring it up to the design standard.

3           What we will be doing is we're moving  
4 vegetation -- the days of removing all the vegetation down  
5 to the waterline are over, and we're going to have to come  
6 up with a reasonable approach to removing  
7 water -- removing the vegetation down to a certain level.  
8 I'm not sure what that is at this time. It's a balance  
9 between what the mitigation requirement will be and the  
10 cost of that and what we need for inspection. But to  
11 bring it up to standards, if you will, would be to remove  
12 vegetation on the land side, water side down to a certain  
13 extent, probably leaving the larger trees there. And  
14 depending on the root balls, remove root balls; then we  
15 could remove some of the smaller trees, remove the  
16 vegetation.

17           There's a significant amount of cracking on the  
18 surface. We're going to have to determine what's the best  
19 method for dealing with that, whether it's such as  
20 diskings, recompactings. We need to put a road on the levee  
21 top. And there may be some alignment issues, because we  
22 don't -- we don't really know where the boundary is right  
23 now. So that may be part of the work that's done.

24           And there is a portion of the levee that extends  
25 beyond the development that we would be doing, and I kind

1 of assume would be part of the developer's responsibility.

2 But that's what we see and we're working on in  
3 creating a statement of necessary work, which we'd be  
4 bringing to the Board for the formation of the maintenance  
5 area.

6 So those items are not reflected in the special  
7 conditions.

8 SECRETARY DOHERTY: Mr. Boatman, have you had a  
9 survey done of this area? Or did Mr. And Mrs. White just  
10 say, "Here, this is it. Let's do it?"

11 MR. BOATWRIGHT: No, the engineers have done a  
12 detailed survey, both topographical and the boundary  
13 survey. So we know exactly what's out there in terms of  
14 heights of the levees, where they begin and end.

15 SECRETARY DOHERTY: Okay. And, Mr. Lerner, I  
16 would find it difficult, if I'm following you, to start  
17 with a project and then to say, "Well, I'm not sure at  
18 this time what we're going to require. And what would be  
19 up to standard, we're not sure. Now we're not going to  
20 remove all the debris" -- or "the growth. But, yes, we  
21 might have to."

22 SENIOR ENGINEER LERNER: There's certain things  
23 that as a maintenance district we would be required to do.  
24 And that's not necessarily the same thing that the  
25 applicant would be required by taking levee sections,

1 spreading out the levee. If he's offering to do that,  
2 that's fine. It has to be done.

3 In terms of what we are actually going to do in  
4 terms of vegetation clearing will depend on the permit.  
5 And we have to negotiate that with the agencies. We don't  
6 know at this time what we'll be able to do or what the  
7 cost is. And that's what we'll have to balance out, what  
8 the mitigation costs. And until you actually have a  
9 definite project -- and we're not there yet in terms of  
10 laying out what we are going to do -- we don't know what  
11 that mitigation would be.

12 SECRETARY DOHERTY: Thank you.

13 FLOODWAY PROTECTION SECTION CHIEF MIRMAZAHERI: I  
14 guess to add to that is, what Noel described was what DWR  
15 would do once they become the local maintaining agency.  
16 And before getting there, DWR is going to have to define  
17 what needs to be done and support it by some financial  
18 plan, which would be assessing the area and then come  
19 before the Board and getting support from the Board and  
20 continuing the process that form the maintenance area.

21 So those are really the standards that LMA has to  
22 achieve.

23 Now, what portion of it the applicant would do or  
24 is responsible to do is open for Board discussion and  
25 Board decision and the agreement that applicant has.



1           But I don't think either Noel or myself will make  
2 that -- obviously all of that work will have to be done by  
3 the applicant, because some of it is not clarified at this  
4 time and is not defined what needs to be done. And they  
5 have to spend time to do it.

6           BOARD MEMBER BURROUGHS: Mr. President, I have a  
7 question.

8           PRESIDENT CARTER: Teri's been waiting.

9           BOARD MEMBER BURROUGHS: Okay. Sure.

10          BOARD MEMBER RIE: Go ahead.

11          PRESIDENT CARTER: Okay. Go ahead.

12          BOARD MEMBER BURROUGHS: Noel, could you describe  
13 why the request is to remove the vegetation?

14          SENIOR ENGINEER LERNER: That's the Corps  
15 standards and it's also, I believe, the Department's, that  
16 the vegetation needs to be removed because roots can  
17 undermine a levee, and it also prevents inspection of the  
18 levee.

19          BOARD MEMBER BURROUGHS: And in the word  
20 "remove," what does that exactly mean?

21          SENIOR ENGINEER LERNER: For larger -- for larger  
22 trees it would mean going into the levee and removing the  
23 roots as well the crown, the root ball. With some of the  
24 smaller -- the smaller roots we might not rip it out. It  
25 might cause more damage than it's worth. But on the

1 significant roots, you'd want to remove them. And as they  
2 decay, they could leave holes in the levee and rodent --  
3 paths for rodents.

4 BOARD MEMBER BURROUGHS: And the statement was  
5 made, once they become the overseeing agency. How long is  
6 that going to take to become official?

7 SENIOR ENGINEER LERNER: Probably six or seven  
8 months. We'll be coming within either the next meeting or  
9 the meeting after with a statement of necessary work and  
10 the -- statement of necessary work and a cost estimate for  
11 the first two years and present that to the Board. And  
12 you'll make a decision on whether to proceed with the  
13 formation. Then after -- if you do vote to proceed, we'll  
14 then begin forming the boundary map, assessment zones,  
15 benefit zones, have a public hearing presenting that to  
16 the public, and then afterwards returning to the Board for  
17 a motion whether to proceed and form officially the  
18 maintenance area.

19 BOARD MEMBER BURROUGHS: And I have one last  
20 question. Well, I might have more than that. I shouldn't  
21 have stated it that way.

22 But my question now: For all these years it  
23 hadn't been under DWR's jurisdiction. Why would you want  
24 to do it now?

25 SENIOR ENGINEER LERNER: Well, we've been asked.

1 It's been brought up to people's attention that this has  
2 not been maintained and we need to act on it.

3 BOARD MEMBER BURROUGHS: And can you give me the  
4 time and date when you decided to oversee this project?

5 SENIOR ENGINEER LERNER: Rod Mayer sent out a  
6 letter, I think it was at the end of August -- I don't  
7 have the date -- the last week in August to --

8 FLOODWAY PROTECTION SECTION CHIEF MIRMAZAHERI:  
9 September 14th.

10 SENIOR ENGINEER LERNER: Then it was the middle  
11 of August -- I mean September when it was sent out, on  
12 September 14th to local agencies stating that if there was  
13 no local agency that would step up to maintain it, the  
14 state would go begin the process of forming a maintenance  
15 area.

16 BOARD MEMBER BURROUGHS: Thank you.

17 PRESIDENT CARTER: Teri.

18 BOARD MEMBER RIE: Is this a federal project  
19 levee?

20 SENIOR ENGINEER LERNER: This is a federal  
21 project levee.

22 BOARD MEMBER RIE: Okay. So let's say the  
23 applicant doesn't get a permit and something happens to  
24 the levee, the levee breaches. Who's responsibility is  
25 that? Who accepts the liability? Will it be us?

1            SENIOR ENGINEER LERNER: I defer to our attorney  
2 for that.

3            STAFF COUNSEL MORGAN: Yeah, you don't have to  
4 speculate on that.

5            Well, we have accepted the project levees into  
6 the state plan of flood control. So if we turn them over  
7 to the local agency, the local agency is supposed to  
8 operate and maintain them. But the state remains as an  
9 indemnifier against the federal government so that the  
10 federal government won't be liable.

11           In this case, however, the problem was clearly  
12 that there was no local agency to accept it from the state  
13 and operate and maintain and hold us harmless, as they are  
14 required by law to do. And so it's incumbent upon the  
15 state to then where we've identified this to go and form a  
16 maintenance area, because no one is going to do the work  
17 otherwise.

18           BOARD MEMBER RIE: Okay. So if the applicant  
19 doesn't bring this levee up to standards, the state's  
20 going to have to pay for it with the taxpayers' money,  
21 correct?

22           STAFF COUNSEL MORGAN: No, no. It's an  
23 assessment district. The maintenance area will -- those  
24 fees will be assessed back to the benefited parcels. The  
25 state will not pay for this.

1           BOARD MEMBER RIE:   Okay.   So the State will get  
2 reimbursed through the assessments; but, nevertheless, the  
3 state will have to step in and make the improvements,  
4 correct?

5           STAFF COUNSEL MORGAN:   But not at their cost.  
6 The cost will be passed on to the maintenance area.

7           BOARD MEMBER RIE:   But if the applicant doesn't  
8 make the improvements and bring it up to standards, the  
9 state will do it with assessment district money?

10          STAFF COUNSEL MORGAN:   Correct.

11          BOARD MEMBER RIE:   So somebody's going to have to  
12 bring this levee up to standards regardless?

13          SENIOR ENGINEER LERNER:   Yes, it will be  
14 maintained.

15          BOARD MEMBER RIE:   If there's a breach this  
16 winter, since it's a federal project levee, the state will  
17 be liable, correct?

18          STAFF COUNSEL MORGAN:   Potentially.

19          BOARD MEMBER RIE:   Okay.

20          SECRETARY DOHERTY:   I have a question.

21                 Does anyone have any history -- perhaps you, Mr.  
22 Boatman -- on the elevation of water during the past few  
23 winters in this particular area.   Do you?

24          MR. BOATWRIGHT:   Yes, I have it here somewhere in  
25 my files as to the elevation of the water at the outfall

1 structure right there in the Department of Water Resources  
2 information. So they do have information. And it's quite  
3 a ways below the crown of the levee in that area -- four  
4 feet, five feet, something like that.

5 SECRETARY DOHERTY: This levee looks in as good a  
6 shape. However, we don't know what's down in there.  
7 Nobody's taken a core sampling.

8 MR. BOATWRIGHT: We have taken a core sampling.

9 SECRETARY DOHERTY: How good is the rest of the  
10 levee on beyond that it's part of?

11 PRESIDENT CARTER: We do have some public comment  
12 that we wanted to hear.

13 SECRETARY DOHERTY: Let's --

14 PRESIDENT CARTER: Unless staff has something  
15 else to add to their presentation.

16 FLOODWAY PROTECTION SECTION CHIEF MIRMAZAHARI: I  
17 don't have anything else to add to address that question.

18 PRESIDENT CARTER: Well, Mr. Boatwright, did you  
19 want to present something?

20 MR. BOATWRIGHT: Yes, I just had a few comments.  
21 And thank you for this opportunity.

22 As Mike has said, we've been cooperating with  
23 staff, with the Board now for more than eight months. And  
24 the two items -- the two most recent items that we were  
25 asked to address have been addressed: Number one, the

1 coming forward of the Department of Water Resources to act  
2 as a maintaining entity. So they're starting on that  
3 process. The underseepage issue has been addressed by the  
4 Corps of Engineers. You have a letter in your packet to  
5 the effect that they are satisfied with the underseepage  
6 concern.

7           We have applied to the Board for an encroachment  
8 permit, and for an encroachment permit that will, as Mike  
9 also testified to, will enhance and strengthen that levee.  
10 The fill material that we're placing against it and the  
11 work that we're doing will enhance that levee. And it  
12 will be at no cost to the state or the local government or  
13 the federal government. So we would do that at our own  
14 cost and we would bring it up to whatever that level is  
15 that the Department of Water Resources says is their  
16 standard.

17           I don't want to run afoul of the other wildlife  
18 agencies, U.S. Fish and Wildlife Service, you know, Fish  
19 and Game. So that's why I'm hesitant to say, you know,  
20 how much of the vegetation would be removed, as I'm sure  
21 the Department of Water Resources is a little hesitant at  
22 this point. But whatever it is, we are committed to  
23 doing. So I'm not backing off on that. We will bring it  
24 up and do the work at whatever standard is required by the  
25 Department.

1           The new homeowners there, I think -- I'd like to  
2 remind you, will also be paying property taxes. And that  
3 19 or \$20,000 a year, their portion of the property  
4 taxes -- percentage of the property taxes, will go to  
5 County Service Area No. 6, which is the maintaining agency  
6 for the Sacramento River levee, the west side of the  
7 Sacramento River levee for Knights Landing. So that's  
8 also important to keep in mind.

9           Now, if you do deny this permit and we are forced  
10 to stay away from the levee, then we won't improve and  
11 enhance that levee. It will stay as it is and it will  
12 fall upon the Department of Water Resources, as you just  
13 heard.

14           There's something that I also need to mention too  
15 that is kind of germane to this entire argument, would be  
16 concern about the failure of the levees in other areas.  
17 The critical erosion site that is downstream three or four  
18 miles from Knights Landing has been repaired. I've been  
19 out there and seen it myself. And I believe it was in  
20 your report this morning that that was one of those  
21 erosion areas of the couple dozen that were repaired in  
22 the summer. So they've done that work out there. They've  
23 put in an irrigation system. They're planting mitigation  
24 trees and all that kind of stuff. It is done out there.

25           I also need to mention that the portion of the



1 levee that Mr. Hodgkins mentioned last time that he'd  
2 spoken to Lynell Pollock about where the water was to the  
3 white line of the road -- I have a person here who is the  
4 Chairperson of the Knights Landing Community Services  
5 District. He spoke to Mr. Pollock, Lynell Pollock's  
6 husband, who's a friend of his, and he told him where that  
7 was and exactly what happened. The situation in actuality  
8 is that the water did come up to the white line in 1997,  
9 but it's a portion of the levee where it's on a curve and  
10 that road is tilted. The white line that it came up to is  
11 the low fog line. So there is considerable vertical  
12 distance that still remains on the levee for that water to  
13 come up. It was not at the top of the levee. It wasn't a  
14 crown road where the white line was the middle of it.

15           Mr. King went out there and he took a level with  
16 him and a two-by-four and did actually measure the  
17 distance. And it had nearly three feet to go from the low  
18 fog line where it was to that upper fog line. So there  
19 was a considerable ways to go. So it's not a situation  
20 that we feel where it is critical where, "Oh, my gosh,  
21 that levee was ready to break," it was just a matter of an  
22 inch or two before it overtopped and eroded away. So I  
23 want to bring that to the Board's attention.

24           For now, I think that's about all I have to  
25 mention.

1           PRESIDENT CARTER: Any questions of Mr.  
2 Boatwright?

3           MR. BOATWRIGHT: Be happy to answer any  
4 questions.

5           VICE PRESIDENT HODGKINS: Mr. Boatwright, you're  
6 saying that the super elevation at this location is three  
7 feet higher on the inside than it -- or that it would  
8 require for the water to go over than where the fog line  
9 is?

10          MR. BOATWRIGHT: I have pictures here that show  
11 that with Mr. King out there with his level and  
12 two-by-four. You can get a sense of it. From the lower  
13 fog line to the upper log fine I think it was --

14          VICE PRESIDENT HODGKINS: I'm not challenging  
15 this particularly. It's just in my memory, that's -- I  
16 don't remember that super --

17          MR. BOATWRIGHT: -- it was something on the order  
18 of two and a half to three feet from the lower fog line to  
19 the upper fog line.

20          VICE PRESIDENT HODGKINS: Could I see the  
21 picture?

22          MR. BOATWRIGHT: Sure.

23          SECRETARY DOHERTY: And where -- on which road is  
24 that fog line? Is it from Knights Landing going towards  
25 Sacramento or is it on the one that comes across from I-5,

1 whatever number that is?

2 MR. BOATWRIGHT: No, it's on 116 as you head  
3 south on the levee -- Sacramento levee.

4 SECRETARY DOHERTY: But the land where the  
5 proposed subdivision is is higher than that highway,  
6 right?

7 MR. BOATWRIGHT: No, the land is not higher than  
8 the levee.

9 SECRETARY DOHERTY: No. But the land where the  
10 subdivision would be situated is higher than this road.

11 MR. BOATWRIGHT: No, this road is on the levee.

12 I think there's some confusion where this road is  
13 located at.

14 SECRETARY DOHERTY: I've got a map here.

15 Okay. I've got the ridge cut.

16 What's the number of the highway?

17 MR. BOATWRIGHT: It's -- where these pictures are  
18 taken is on Road 116. It's not a county highway. It's  
19 the river road going south towards Fremont Weir on the  
20 west bank of the Sacramento River.

21 SECRETARY DOHERTY: Oh, okay. All right. Now  
22 that clears it up for me. All right. It where we took  
23 that tour.

24 PRESIDENT CARTER: Any other questions for Mr.  
25 Boatwright?

1           Okay.

2           MR. BOATWRIGHT: I think that upper photo there  
3 is going to the center line of the road, is where that's  
4 going, because he didn't have a long enough two-by-four to  
5 make it all the way across. I would say it was a couple  
6 of steps.

7           PRESIDENT CARTER: Great. Thank you.

8           MR. BOATWRIGHT: Thank you.

9           PRESIDENT CARTER: Mr. Countryman.

10          FLOODWAY PROTECTION SECTION CHIEF MIRMAZAHERI:  
11 Chairman, a point of clarification.

12          PRESIDENT CARTER: You're on 13B? It says 13A on  
13 your card.

14          MR. COUNTRYMAN: I'm sorry.

15          PRESIDENT CARTER: It also says June 6th of 2006  
16 is the date.

17          MR. COUNTRYMAN: Maybe I pulled the wrong one.

18          (Laughter.)

19          PRESIDENT CARTER: All kinds of surprises. Very  
20 good.

21          Mr. Mirmazaheri.

22          FLOODWAY PROTECTION SECTION CHIEF MIRMAZAHERI:  
23 Just a point of clarification.

24          When Mr. Boatwright speaks of being able to bring  
25 the levee up to the standard, he's only talking about the

1 land side, which is point of information -- and the staff  
2 doesn't have any objection to that. I just wanted the  
3 Board to be aware of that. And the standard that local  
4 maintaining agency discusses includes both land side and  
5 water side.

6 PRESIDENT CARTER: Any other questions of staff  
7 or the applicant?

8 MR. BOATWRIGHT: Can I respond to that quickly  
9 please?

10 We will make improvements to the water side if  
11 that's necessary too. I don't believe it would be, but --  
12 if that's what's required.

13 PRESIDENT CARTER: Okay. Very good.

14 What's the Board's pleasure here?

15 BOARD MEMBER BURROUGHS: I'd like to hear the  
16 comments from the public.

17 PRESIDENT CARTER: We just did.

18 BOARD MEMBER BURROUGHS: Oh, that's all there  
19 was?

20 PRESIDENT CARTER: That's all there was.

21 BOARD MEMBER BURROUGHS: Oh.

22 VICE PRESIDENT HODGKINS: I have a question for  
23 Scott.

24 STAFF COUNSEL MORGAN: Oh, okay. In that case --  
25 I was going to have Mike propose some amended language to

1 this permit condition. But since I'm here, I'll go ahead  
2 and read it to you.

3 But I'll answer your question first.

4 VICE PRESIDENT HODGKINS: The point is made in a  
5 letter from Morrison Foerster that in my request, which  
6 the Board supported, for a study to verify that these  
7 homes are being constructed against where the water would  
8 be if the levee failed, that was overstepping the  
9 authority of the Board. And do you agree with that?

10 STAFF COUNSEL MORGAN: I don't want to  
11 specifically agree with that, but I do -- I did at the  
12 time of meeting last month indicate that they would have a  
13 very good case if they were to argue that the Board had  
14 overstepped its bounds. Now, I would vigorously defend  
15 the Board in whatever the Board wants to do. But it's not  
16 clear that if you look at 8723, the grounds for denying  
17 permits, that that really is related to the integrity of  
18 the plan of flood control. That said, the phrase "plan of  
19 flood control" isn't defined narrowly in the Water Code.  
20 The Board really interprets what is the plan of flood  
21 control. But I think --

22 VICE PRESIDENT HODGKINS: Thank you.

23 STAFF COUNSEL MORGAN: Let me make one suggestion  
24 with regard to Permit Condition 48 that was presented.  
25 And if DWR has any objections to this, I think they -- I

1 think they were the ones who prepared this for staff,  
2 because it will be the Department that will be maintaining  
3 the maintenance area. And we want to make sure that their  
4 concerns were addressed.

5           Unless they have a problem with it, I would  
6 recommend that Condition 48 be amended. Currently it  
7 reads, "Permittee shall grant an easement to the  
8 Reclamation Board and Department of Water Resources to  
9 allow access to the maintenance road encircling the  
10 drainage detention pond." I would recommend that be  
11 revised to read that "Permittee shall grant an easement to  
12 the Sacramento and San Joaquin Drainage District that  
13 shall be determined by the Reclamation Board and the  
14 Department of Water Resources to be sufficient to allow  
15 access to the maintenance road encircling the drainage  
16 detention pond."

17           Does any of the staff or the applicant have any  
18 problems with that language?

19           BOARD MEMBER BURROUGHS: Scott -- Mr. Morgan,  
20 that refers specifically to the detention pond. Would you  
21 add another one that would still permit an easement to  
22 the -- for other purposes other than just to the detention  
23 pond?

24           STAFF COUNSEL MORGAN: I think -- my  
25 understanding is there's already an easement requirement

1 in the permit language. This is an added one because  
2 there was this little gap there; they wanted to get it  
3 into the detention pond. The easements that are going to  
4 be granted over the rest of it will -- my understanding  
5 was that those were going to be adequate for all other  
6 purpose, but there was this one unclear area they wanted  
7 to make sure they got that. And if Noel's still here.  
8 Perhaps he can address that.

9 SENIOR ENGINEER LERNER: Noel Lerner, Maintenance  
10 Branch.

11 There's -- One of the provisions is an easement  
12 from the toe of the levee or the toe of the ramp. And a  
13 portion of the project down by the detention pond in order  
14 to access that easement and drive away from it -- I mean  
15 because we can't really turn around -- there is a road  
16 that goes around the detention pond. And we just want to  
17 be able to drive our equipment around the pond to get out.  
18 That's what it was meant to clarify.

19 PRESIDENT CARTER: Okay. Any other questions,  
20 clarifications?

21 BOARD MEMBER BURROUGHS: I would like to know if  
22 Mr. Bradley has any comments about these new changes or  
23 about anything else that's been presented.

24 CHIEF ENGINEER BRADLEY: No, I'm actually okay  
25 with this permit. My reluctance at the September Board



1 meeting had to do with receiving DWR's letter on Thursday  
2 afternoon saying they would form a maintenance area. My  
3 concern was, going forward with a recommendation to accept  
4 this permit without coordinating with DWR and what they  
5 would need making sure that everything the applicant  
6 proposed was okay with DWR, that would be the maintaining  
7 agency in the future. That had not been done and I didn't  
8 feel that we should move forward at that time.

9 But I am okay with the permit as it is at the  
10 moment.

11 PRESIDENT CARTER: Okay. So at this point, any  
12 other discussion?

13 We'll entertain a motion.

14 BOARD MEMBER RIE: I'd like to make a motion.

15 PRESIDENT CARTER: Jay, why don't you clarify a  
16 little bit about the process here.

17 GENERAL MANAGER PUNIA: If the Board grants the  
18 permit, then we may have also to pass another motion  
19 regarding CEQA findings. And I think if the Board's  
20 motion passes, then I will propose to pass another motion  
21 to certify CEQA findings.

22 PRESIDENT CARTER: Actually we need to do the  
23 CEQA before we do -- we approve the permit.

24 GENERAL MANAGER PUNIA: That's correct.

25 BOARD MEMBER RIE: Can we do it all together?

1           STAFF COUNSEL MORGAN: You can do it all  
2 together. But CEQA first, permit second, but all part of  
3 the same.

4           BOARD MEMBER RIE: Okay. I move that we make  
5 CEQA findings for Application 18046.

6           Do you want me to read this language?

7           GENERAL MANAGER PUNIA: Yes. I think there's 1,  
8 3, and 4.

9           BOARD MEMBER RIE: "That the Reclamation Board  
10 concurs with the Environmental Review Committee's  
11 determination as endorsed by its staff; that while  
12 subdivision initial study tiered mitigation negative  
13 declaration adopted by Yolo County is adequate and is in  
14 compliance with CEQA for the purposes of approving  
15 Encroachment Permit 18046; that The Reclamation Board  
16 finds that there are no significant environmental impacts  
17 identified in the initial study and MND" -- what is that?

18          GENERAL MANAGER PUNIA: Mitigated Negative  
19 Declaration.

20          BOARD MEMBER RIE: -- "and the mitigated negative  
21 declaration within the Board's jurisdiction and  
22 responsibility that require changes or alterations to  
23 avoid or substantially lessen those effects; and that the  
24 Reclamation Board has determined through its Environmental  
25 Review Committee that all other changes and alterations

1 that are within Yolo County's responsibility and  
2 jurisdiction are not the responsibility of the Reclamation  
3 Board and have been adopted by Yolo County."

4 And I recommend approval of application 18046  
5 with DWR's modifications to Special Conditions 15, 34, 35,  
6 36, 43 and 48, and with the modifications to Condition 48  
7 as recommended by counsel.

8 SECRETARY DOHERTY: And I would like to second  
9 that motion.

10 PRESIDENT CARTER: We have a motion and a second.

11 Any discussion?

12 All right. All those in favor of approving the  
13 application and -- or approving the motion indicate by  
14 saying aye.

15 (Ayes.)

16 PRESIDENT CARTER: And opposed?

17 (Ayes.)

18 PRESIDENT CARTER: Okay. So the motion carries.

19 Very good.

20 On to Item 13B, Application No. 17659-A, River  
21 Partners, Glenn County.

22 Consider Application No. 17659-A to plant mixed  
23 riparian forest, elderberry and woodland, valley oaks and  
24 savanna, and grassland on 136 acres within the Butte  
25 Basin.

1 Mr. Fua, good afternoon.

2 (Thereupon an overhead presentation was  
3 Presented as follows.)

4 ASSISTANT GENERAL MANAGER FUA: For the record,  
5 my name is Dan Fua, the Assistant General Manager for the  
6 Reclamation Board.

7 President Carter, members of the Board, I'm going  
8 to present to you this afternoon the staff report on the  
9 River Partners' Del Rio Wildland Preserve Restoration  
10 Project.

11 The River Partners had asked for an application  
12 for an encroachment permit for a portion of their Del Rio  
13 Wildland Preserve.

14 I have a little slide presentation here that I'd  
15 like to present.

16 --o0o--

17 ASSISTANT GENERAL MANAGER FUA: Okay. River  
18 partners proposes to restore riparian habitat on 136 acres  
19 of land in the Butte Basin by planting mixed riparian  
20 forest, elderberry, woodland, valley oak savanna, and  
21 grassland.

22 --o0o--

23 ASSISTANT GENERAL MANAGER FUA: This is the  
24 general location of the Del Rio side.

25 It's in Glenn County in the Butte Basin. It's

1 about five miles north of Butte City and just south of  
2 Llano Seco Rancho.

3 The western boundary -- well, Angel Slough is to  
4 the east of the preserve.

5 And the Sacramento River is to the west. It's  
6 about a mile away from the western boundary.

7 --o0o--

8 ASSISTANT GENERAL MANAGER FUA: Okay. This is a  
9 close-up map of the Del Rio Preserve.

10 The 27-acre parcel is an existing riparian forest  
11 habitat.

12 The 96-acre parcel is currently undergoing  
13 habitat restoration and had received a permit from the  
14 Board in 2003.

15 The 136-acre parcel is the subject of this  
16 application. As I said, River Partners proposes to  
17 restore this parcel into a riparian habitat by planting  
18 riparian forest, valley oak savana, grassland, woodland,  
19 and elderberry plants.

20 The site is currently a walnut orchard. The  
21 restoration project is expected to provide ecological  
22 benefits, including enhancement of habitat for a variety  
23 of species, and also will provide educational and  
24 recreational opportunities.

25 After restoration is completed River Partners is

1 planning to transfer ownership of this property either to  
2 the Department of Fish and Game or to the U.S. Fish and  
3 Wildlife Service or any other resource agency.

4 --o0o--

5 ASSISTANT GENERAL MANAGER FUA: Okay. The  
6 Reclamation Board staff had review the application and  
7 identified two major issues that are unresolved at this  
8 point. These include the planting of elderberry plants  
9 and the lack of long-term maintenance and the funding to  
10 implement it.

11 Implementation of the proposed project creates  
12 additional elderberry habitat that's protected under the  
13 Federal Endangered Species Act. The creation of this  
14 habitat has the potential to affect or interfere with  
15 future flood control, system operations and maintenance  
16 activities.

17 Although the applicant has secured a Safe Harbor  
18 Agreement and permit from the U.S. Fish and Wildlife  
19 Service, the agreement does not protect adjacent property  
20 owners from the regulatory restriction if elderberry is to  
21 spread in their properties.

22 For your information, the Safe Harbor Agreement  
23 allows River Partners to plant over 1,500 plants --  
24 elderberry plants into the entire Del Rio Preserve. As we  
25 all know, elderberry plants can easily be spread and

1 propagated. And in order for the adjacent property owners  
2 to be protected, they have to enter into a written  
3 agreement with the U.S. Fish and Wildlife Service to  
4 obtain the same incident of take authority afforded to  
5 River Partners.

6           The second issue is the long-term maintenance and  
7 financial plan. Over time the riparian vegetation will  
8 become overgrown, and would certainly affect the ability  
9 of flood waters to pass through it. It is therefore the  
10 responsibility of River Partners and any future owners to  
11 adequately maintain the restored site so that it will not  
12 interfere with the operation and maintenance activities of  
13 the floodways.

14           To assure continued protection of the flood  
15 control system, the applicant should have a long-term plan  
16 in place, together with the funding to implement it.

17                               --o0o--

18           ASSISTANT GENERAL MANAGER FUA: We have received  
19 three letters from concerned entities from the area:  
20 Levee District 3, Glenn County Board of Supervisors, and  
21 the Family Water Alliance. And I believe you have copies  
22 of those letters.

23           Levee District 3 and the Family Water Alliance  
24 are concerned with the introduction of elderberry plants  
25 and also from the lack of maintenance plan and the funding

1 to implement it.

2 Glenn County Board of Supervisors is concerned  
3 about the lack of funding for maintenance.

4 --o0o--

5 ASSISTANT GENERAL MANAGER FUA: Staff  
6 recommendation. Staff recommends that prior to issuing  
7 the permit, that two issues should be resolved; and, that  
8 is, resolving the concerns regarding the spread of  
9 elderberry on to adjacent lands, and developing and  
10 funding a financial plan to provide for long-term  
11 maintenance of the project site.

12 --o0o--

13 ASSISTANT GENERAL MANAGER FUA: So we have  
14 prepared for you a draft permit for your consideration,  
15 and included the following suggested conditions in order  
16 to address the elderberry plantings and the long-term  
17 maintenance and funding plan issues. Condition 33 is for  
18 the elderberry and Condition 35 is for the long-term  
19 maintenance plan and funding.

20 --o0o--

21 ASSISTANT GENERAL MANAGER FUA: That concludes my  
22 presentation. And I would be glad to answer any questions  
23 that you may have.

24 SECRETARY DOHERTY: One of the questions I have,  
25 Mr. Fua, was -- there was going to be a fund established.



1 Who is going to put money into that fund, the landowners  
2 surrounding this area or the government or the people that  
3 are planting the bushes and whatnot? Where's it going to  
4 come from?

5 ASSISTANT GENERAL MANAGER FUA: The long-term  
6 maintenance plan that we are asking and the funding to  
7 implement it, the funding should come from the property  
8 owners. And right now it should come from River Partners.  
9 And then in the future when it's transferred to a  
10 government agency, then that government agency should  
11 provide for the funding of that maintenance plan.

12 I don't know the mechanics of how that should be  
13 done if we don't have an agreement. That's why in  
14 Condition 35 we were talking about an agreement here. Or  
15 33. I'm sorry.

16 This agreement that we're talking about here  
17 is -- will also include the maintenance plan and the  
18 funding mechanism for the long-term maintenance plan. And  
19 I will read it.

20 "No planting of elderberry shrubs shall be  
21 allowed until a signed agreement between the Reclamation  
22 Board and River Partners responsibilities with respect to  
23 planting elderberry shrubs has been executed. The  
24 agreement shall also address the potential for  
25 introduction of elderberry shrubs on adjacent properties."

1           SECRETARY DOHERTY: But somewhere in here didn't  
2 I read something about if they propagate over on to --  
3 let's say I'm next door to Del Rio. And if they propagate  
4 over on to my land, and I don't find it the first year,  
5 and it's over an inch wide the second year and I cut it  
6 down, what happens?

7           ASSISTANT GENERAL MANAGER FUA: If you did not --

8           SECRETARY DOHERTY: And I haven't signed  
9 anything.

10          ASSISTANT GENERAL MANAGER FUA: Okay. Then you  
11 will be subject to the regulatory restriction under the  
12 Federal Endangered Species Act.

13          PRESIDENT CARTER: Any other questions of Mr.  
14 Fua?

15          Okay. Thank you Mr. Fua.

16          Several cards here.

17          Mr. Carlon.

18          MR. CARLON: I'll defer and let Mr. Efseaff start  
19 the presentation.

20          PRESIDENT CARTER: Okay. Mr. Efseaff.

21          MR. EFSEAFF: Thank you, President Carter,  
22 members of the Board. I appreciate the opportunity to  
23 speak about this project. My name is Dan Efseaff. I'm a  
24 restoration ecologist with River Partners, based in Chico,  
25 California.

1           First of all I want to acknowledge that the  
2 staff -- your staff, they've been courteous and  
3 professional in this whole matter, and spent a lot of time  
4 on our rather modest project here.

5           I have a couple comments as far as background  
6 that I'll go through, and then address some of the -- the  
7 two outstanding issues, and then a few questions I had on  
8 the -- and comments on the special conditions. So that's  
9 where I'm going here.

10           We successfully received an encroachment permit  
11 in 2003. And, as you know, the permit specifically  
12 prohibited the planting of elderberry. As a conservation  
13 organization, we would like to see healthy populations of  
14 the Valley Elderberry Long Horn Beetle, or VELB, so they  
15 can come off the endangered species list, the list that  
16 solves a lot of problems.

17           So when we heard -- because of the concern of  
18 Levee District 3 and the Rec Board on that initial permit,  
19 we embarked on a two-year process to develop a Safe Harbor  
20 Agreement with Fish and Wildlife. This Safe Harbor  
21 Agreement specifically identifies levee maintenance  
22 activities as protected activities.

23           And the way that the safe harbor works is we can  
24 bring it back -- in exchange for a benefit to the species,  
25 plan for another 1500 elderberry plants on site, over the

1 term of the contract, the agreement, we can bring it back  
2 down to base line at any time. So if there's reason for  
3 levee maintenance, reason for a floodfight, we can take  
4 out all 1500 elderberries that we plant, all naturally  
5 recruited elderberries that we plant, as long as we have a  
6 base line of one on the site.

7           For us, clearly the only reason for the Safe  
8 Harbor Agreement was to provide a genuine effort to solve  
9 Levee District 3 and the Rec Board's potential problems  
10 with VELB on -- a conflict with VELB.

11           Something that's pertinent on the background  
12 information, as you are well aware of the emergency repair  
13 work on the levee sites in California, River Partners was  
14 asked to approach to assist with this effort on transplant  
15 of the elderberry plants from four of the sites, two on  
16 Bear River and two on the Sacramento River, to support  
17 that levee repair work.

18           In fact, one of the elderberries in Mr. Lee's  
19 photos earlier was one of the once that we transplanted.

20           With pretty minimal notice, of only a couple of  
21 days, we transplanted and accepted on the Del Rio Preserve  
22 11 mature elderberry shrubs. We were approached at the  
23 transplant predominantly because -- our understanding is  
24 that DWR was looking for sites that already had a  
25 mechanism in place, a safe harbor agreement -- by the way,

1 this was the first one for VELB in northern California.  
2 So then it would allow for take for flood fighting  
3 purposes.

4 Del Rio was also attractive because it had an  
5 existing irrigation system in place, it had riparian  
6 plantings already there. Well on its way to becoming a  
7 habitat. And it had a management in place that would  
8 allow for the care of those plants.

9 I wanted to address a couple of your  
10 recommendations -- the two recommendations that staff had  
11 on it, which are -- present considerable problems for us.

12 First of all, based on the Safe Harbor  
13 Agreement -- first, the elderberry planting. The Safe  
14 Harbor Agreement solves the conflict, at least on our  
15 property. There is a provision in there for adjoining  
16 landowners to sign in and have the same protection that we  
17 have. They could have -- go back to the base line on  
18 their site. They have ability of take if they sign up for  
19 them.

20 Again, just to restress, the levee maintenance  
21 activities are acceptable under the term. And the term is  
22 for 25 years -- the agreement's for 25 years, and that can  
23 be extended.

24 There's a couple of fundamental assumptions built  
25 into the recommendations that I would like to address.

1 And the first one is we can find no scientific evidence  
2 for the idea that elderberry seed production is the  
3 limiting factor. That's the reason why they aren't moving  
4 next door, for example. In a biological term, we'd call  
5 it density dependent.

6           Seed production is pretty robust on these plants.  
7 They're transplanted -- or transported predominantly with  
8 birds. And so they go through the gut of a bird.

9           I elderberry planted -- I don't know if's there's  
10 a one. But there's one I planted out in the Capitol here,  
11 can easily find its way upon the Sacramento River within  
12 the span of the time it goes through a bird's gullet and  
13 the distance they can travel.

14           U.S. Fish and Wildlife has planted over 70,000  
15 elderberries on the property on the Sacramento River. And  
16 a natural recruitment on these areas, it has not  
17 appreciably increased. There's no explosion of  
18 elderberries next door.

19           Typically maintenance -- regular maintenance.  
20 You do not see elderberries popped up in tended orchards  
21 or yards. They're in areas that seem to get missed a  
22 year -- or a couple years.

23           Currently, you know, there's -- kind of  
24 scientific side of it aside. Currently the only  
25 elderberry on site are those that are naturally recruited

1 and ones that belong -- the 11 mature elderberry shrubs  
2 that were transplanted on site. I suspect that the DWR  
3 agreement did not take -- does not take the responsibility  
4 for inadvertent introduction of elderberry from those  
5 plants. And I ask that we be -- I'm not sure why we  
6 wouldn't be -- why we would be held to a different  
7 standard.

8           There's also connection there if the --  
9 inevitably the denial of the elderberry planting nullifies  
10 the Safe Harbor Agreement, that removes the ability of  
11 take on the property. It probably has enough locations  
12 for the U.S. Fish and Wildlife agreement on then allowing  
13 mitigation on the site. And so DWR would probably be  
14 responsible for additional costs to buy additional  
15 property, develop a safe harbor agreement, and  
16 transplant -- and plant plants on a new site.

17           PRESIDENT CARTER: Mr. Efseaff, could you please  
18 try to wrap up.

19           MR. EFSEAFF: Sure.

20           I'm bringing up these things just because I think  
21 that they're important to have addressed in the staff  
22 comments.

23           The financial management plan. Couple of things.  
24 My understanding is that we have no outstanding issues  
25 with the levee district. They have no problems with our

1 current maintenance. That hasn't been something raised.  
2 We wish to be treated like any other landowner. There's  
3 mechanisms there for if we don't comply. They're very  
4 clear in any permit we've received.

5           And in the long term, this property is likely to  
6 go to U.S. Fish and Wildlife and Department of Fish and  
7 Game. On the statement -- these agencies do have money  
8 budgeted for maintenance. Last fiscal year, U.S. Fish and  
9 wildlife had a -- Sacramento River Natural Wildlife Refuge  
10 spent \$250,000 on herbicide treatment and base of weed  
11 removal and other maintenance activities on the site.  
12 That does not include staff's salaries or benefits or  
13 active restoration projects. 250,000.

14           The Fish and Game counterpart that is -- most  
15 likely get it is the upper Butte Basin wildlife area.  
16 Their operations budget is three-quarters of a million  
17 dollars -- 750,000 on the property that they've managed.  
18 They have staff. They have equipment. They could  
19 certainly do maintenance work out there if necessary.

20           I guess the other thing is concern about the kind  
21 of developing policy on project-by-project basis. Policy  
22 raises all kind of questions that were addressed  
23 earlier -- or asked earlier. Where does the money come  
24 from? What's the amount -- I haven't heard the amount --  
25 for this tax on us essentially? Who would administer the



1 funds? Who makes the decision on how the funding is  
2 spent? What's appropriate expenditures on the site?

3 Most of our funding comes from state and federal  
4 funds. Placing such funds in a contingency fund is most  
5 likely illegal, on the proposition money, for example.

6 These funds are appropriated for specific  
7 purposes, and have to make your entities accountable for  
8 Congress or the Legislature.

9 PRESIDENT CARTER: Ms. Efseaff, we have a number  
10 of people who want to speak to this. So please wrap up in  
11 the next 30 seconds.

12 MR. EFSEAFF: I had a couple of comments on  
13 conditions.

14 PRESIDENT CARTER: Make them quickly please.

15 MR. EFSEAFF: Number 13 on the special conditions  
16 addresses easements. The property has a project levee on  
17 site. It's had an easement for decades. And so I'm not  
18 sure why that appears on there.

19 Number 33, we're not sure what it means. We have  
20 a safe harbor agreement in place. We aren't sure what the  
21 potential agreement needs to look like. And we wonder if  
22 DWR would take responsibility of the levee mature  
23 elderberries if those offspring appear on site and are  
24 introduced to local landowners.

25 Item No. 35, it's difficult to see how we would

1 enforce that. It's asking us as a private landowner to  
2 have control over state or federal agency that may take  
3 control of the property in the future. It seems like  
4 that's an illegal offer.

5 PRESIDENT CARTER: Thanks very much.

6 MR. EFSEAFF: You're welcome.

7 PRESIDENT CARTER: Mr. Carlon.

8 MR. CARLON: John Carlon, President, River  
9 Partners. Good afternoon, President Carter, members of  
10 the Board. I'll keep my comments brief. I know it's been  
11 a long day for everyone.

12 Basically all we're asking is to be treated like  
13 any other landowner. We have met all of the flood control  
14 regulatory hydraulic compliance measures required on this  
15 property. This property is on the dry side of the levee.  
16 We're a mile away from the river. I think you'll hear  
17 some testimony a little later, it's -- you know, the  
18 river -- the flood corridor here is three miles wide. And  
19 really what we're being asked to do is we're being asked  
20 not to plant elderberry. And as a wildlife organization,  
21 a habitat organization, that's basically taking one of our  
22 rights as a property owner away from us.

23 We understand that there's liabilities and  
24 associated costs and risks to flood control from that. So  
25 we spent two years and got a safe harbor agreement.

1 That's the gold standard for mitigating any kind of future  
2 liability. Fish & Wildlife cooperated. This is a  
3 multiple agency effort to demonstrate that wildlife  
4 habitat, flood control objectives can all be met while  
5 minimizing the risk and cost and exposure to all parties  
6 involved. This is a model project right here that we're  
7 asking you to just take a serious look at.

8           The second part is the idea that the Board would  
9 ask for an endowment, an unspecified amount of money to be  
10 deposited in a local government, all very unclear. The  
11 amount's unclear, who's going to hold the money, how the  
12 decision's going to be made, what's going to happen to  
13 those funds in the future. I look through Title 23. I  
14 don't see anywhere in that title that there's a provision  
15 where private property owners are asked to put their money  
16 in a fund in perpetuity to ensure that state and federal  
17 agencies meet their regulatory -- or their legal missions.  
18 That's what's being asked of us here, is to take our  
19 money, put it in with county government in a very  
20 undefined way, unless -- if there's a model -- we've  
21 asked. We haven't seen this ever being done in the past.  
22 And we just don't feel that that's fair.

23           And I would encourage the Board to look at that  
24 and think about the kind of precedent that's being set  
25 with this kind of a decision, especially on a

1 project-by-project basis without looking across what this  
2 means for every other applicant that comes behind us, the  
3 idea that you're going to take private dollars and put  
4 them in an endowment in perpetuity.

5           And I'm happy to address any questions if anybody  
6 has any questions.

7           PRESIDENT CARTER: Any questions for Mr. Carlon.

8           Thank you.

9           Mr. Countryman.

10          MR. COUNTRYMAN: Joseph Countryman, MBK  
11 Engineers.

12          I would say that my credentials as a proponent  
13 for the elderberry and the elderberry plant are not very  
14 high. I'm not a big proponent of the elderberry.

15          But I am a proponent for this project. I did the  
16 hydraulic analysis for this project.

17          I just want to explain that the floodplain is  
18 over three miles wide here. We are talking about planting  
19 in an area that's not between the levee -- the river side  
20 of the levee. We're planting on a side that's on the  
21 non-river side of the levee. It's in the Butte Basin  
22 overflow area. It's in an area that's in the shadow of  
23 the -- the end of the project levee is very, very close to  
24 where this project is. It's in the shadow of the water  
25 coming around the end of that levee, so the velocities are

1 very low in this area.

2 If you completely block the area off, you  
3 wouldn't have any significant impact on the water surface  
4 elevation.

5 From a flood control perspective, a safety  
6 perspective, I could not conjure up any argument for not  
7 approving this permit.

8 That's it. Any questions?

9 SECRETARY DOHERTY: Yeah, I have a question for  
10 you.

11 At the present time, this is a walnut orchard, is  
12 that correct?

13 MR. COUNTRYMAN: Yes.

14 SECRETARY DOHERTY: And the walnut trees are well  
15 spaced?

16 MR. COUNTRYMAN: Yes.

17 SECRETARY DOHERTY: And when you put in the  
18 elderberry, they're small and a little bit bushy?

19 MR. COUNTRYMAN: Um-hmm.

20 SECRETARY DOHERTY: And probably get a little bit  
21 bushier as time goes by.

22 Now, initially there wouldn't be much problem  
23 with flowage easement. But as they progress, would there  
24 not be a still greater slowing of the water forces  
25 perhaps, causing maybe the river to rise and maybe adding

1 to a cumulative effect along the river?

2 MR. COUNTRYMAN: I don't want to get too  
3 technical here. But the -- since the velocity is a foot  
4 per second or less, the maximum height, if you completely  
5 block the area off, that you could raise the water surface  
6 elevation would be 1 divided by 64 in feet. So -- I mean  
7 I can't do that math in my head, but it's a very, very  
8 small number. And that's if you completely blocked it  
9 off. Because it's the velocity squared divided by 2G.  
10 That's how you would calculate the impact that you could  
11 have there.

12 The elderberries are not going to completely  
13 block the flow off. So 1 divided by 64 wouldn't be the  
14 impact at any rate. It would be something much less than  
15 that. And not only that, this is a small part of a  
16 three-mile wide flow -- overflow area that is not on the  
17 river side but it's on the Butte Basin side. So from an  
18 impact to the flood system, there's just no possibility  
19 that this project could impact the flood system.

20 SECRETARY DOHERTY: So you've got 27 acres of  
21 walnut orchards there now, right?

22 MR. COUNTRYMAN: Yes.

23 SECRETARY DOHERTY: How many trees to the acre at  
24 the present time?

25 MR. COUNTRYMAN: I don't know.

1           SECRETARY DOHERTY: And you're going to advise  
2   planting thousands of elderberries. Is it -- am I -- is  
3   it 16,000?

4           ASSISTANT GENERAL MANAGER FUA: No, 1500.

5           SECRETARY DOHERTY: Oh, 1600.

6           ASSISTANT GENERAL MANAGER FUA: Fifteen hundred.

7           SECRETARY DOHERTY: Fifteen hundred. Okay.

8           MR. COUNTRYMAN: Yeah, I'm not advising to the  
9   plant. I'm just saying to the hydraulic impact. You may  
10   have other reasons for wanting to not approve or approve  
11   this permit. But from a hydraulic engineer's point of  
12   view, there's no impact to the flood system.

13          SECRETARY DOHERTY: Thank you.

14          VICE PRESIDENT HODGKINS: Do we have a map that  
15   you could use to show me at least how this fits into the  
16   total width of the floodway at this point in time?

17          BOARD MEMBER RIE: While you guys are putting  
18   your maps together, can I ask a question for Mr.  
19   Countryman?

20          PRESIDENT CARTER: Mr. Countryman?

21          MR. COUNTRYMAN: Yes.

22          BOARD MEMBER RIE: I have a question.

23          So we're taking out walnut trees and then we're  
24   putting elderberry bushes. Does the water surface rise  
25   after you put in the elderberry bushes?

1           MR. COUNTRYMAN: Not that you could ever notice.  
2 Like I said, it would be, in feet, 1 divided by 64, would  
3 be the maximum height that you could raise the water  
4 surface elevation if you completely block the flow off.  
5 If you let flow continue through there, it would be less  
6 than 1 divided by 64.

7           BOARD MEMBER RIE: Is that inches or feet?

8           MR. COUNTRYMAN: Feet.

9           BOARD MEMBER RIE: So 1/64 of a foot rising?

10          MR. COUNTRYMAN: If it completely blocked it.  
11 And if you have any flow through there, it would be less  
12 than that.

13          BOARD MEMBER RIE: Okay. So we're talking like  
14 millimeters difference?

15          MR. COUNTRYMAN: It would be imperceptible to  
16 anyone that was out there.

17          BOARD MEMBER RIE: Okay. So what you're saying  
18 is planting elderberry bushes don't really have any  
19 hydraulic impact?

20          MR. COUNTRYMAN: Well, at this location -- at  
21 this location, yes, I'm saying that. I can easily come up  
22 with a totally different answer if you had the same amount  
23 of acreage on the Sacramento River between the project  
24 levees and you had a velocity of five or eight feet per  
25 second. You would have a totally different answer.



1           The reason that this is the answer for this site  
2 is that it's 18,000 feet wide, we're at 1200 feet that  
3 we're planting, the velocity is less than a foot per  
4 second in this area according to the 2D modeling done for  
5 the Corps of Engineers. So I'm just saying that -- if  
6 you're going to plant elderberries anywhere in the system,  
7 if you can't approve this one, you can't approve one any  
8 place.

9           SECRETARY DOHERTY: Is this on the backside of  
10 the road as you go up towards Chico and there's a wildlife  
11 viewing area on the left?

12          MR. COUNTRYMAN: That's correct.

13          SECRETARY DOHERTY: And it's on the backside of  
14 that?

15          MR. COUNTRYMAN: Yeah, that's correct. Right.

16          But the end of the levee -- of the project levee  
17 ends just north of where this property is. If you've ever  
18 stood out on the end of that levee there, you'd know what  
19 I'm talking about.

20          VICE PRESIDENT HODGKINS: Correct me if I'm  
21 wrong. But in effect you have an 18,000 foot flood map?

22          MR. COUNTRYMAN: Right.

23          VICE PRESIDENT HODGKINS: Okay. You want to  
24 plant these elderberries across it 1200 feet?

25          MR. COUNTRYMAN: Right.

1           VICE PRESIDENT HODGKINS:  So in effect -- and I'm  
2   just checking to make sure I understand what you're  
3   saying.  If you in effect levied off this 10 percent --  
4   6 percent of the floodway width, the net hydraulic impact  
5   would be less than quarter of an inch?

6           MR. COUNTRYMAN:  And the reason of it -- it's not  
7   only that it's the width.  It's because the end of the  
8   project levee comes up and it ends right there, and so  
9   there's a flow velocity shadow --

10          VICE PRESIDENT HODGKINS:  I understand.

11          MR. COUNTRYMAN:  -- behind it.  So as the water  
12   flows around the end of that levee, there's not very much  
13   velocity right there.

14          VICE PRESIDENT HODGKINS:  I understand.  Okay.

15          So in effect what your telling us is they could  
16   levee this area and there wouldn't be any significant  
17   hydraulic impact?

18          MR. COUNTRYMAN:  That's my opinion.

19          VICE PRESIDENT HODGKINS:  Thank you.

20          PRESIDENT CARTER:  Any more questions for Mr.  
21   Countryman.

22          Okay.  Mr. Larrabee.

23          (Thereupon an overhead presentation was  
24   Presented as follows.)

25          MR. LARRABEE:  Members of the Board.  Thank you

1 for hearing me today.

2 I'll wait for this to come up.

3 My name is Eric Larrabee. I am one of the three  
4 trustees for Levee District 3.

5 --o0o--

6 MR. LARRABEE: We find our home around Butte  
7 City. This is a picture of the town. I took this just  
8 for reference. We maintain approximately 12.4 miles of  
9 levee on the east side of the Sacramento River, at the  
10 left bank, if you will. The project levee starts at the  
11 Glenn/Butte County line up in Llano Seco. It runs south,  
12 terminates at the Colusa County line.

13 What I'd like to do -- I've got three issues here  
14 today that I'd like to speak towards. And probably our  
15 biggest issue is long-term maintenance and elderberry.  
16 Then I'd like to conclude with just a bit on some  
17 cumulative impacts that I think that we're seeing in the  
18 floodway.

19 We operate on a fiscal budget of approximately  
20 \$15,000 a year over the past five years. We used to enjoy  
21 more around 19 to \$20,000. And that has been subsequently  
22 declining over the last five to six years due to not just  
23 secure property taxes, but interest rates. We are  
24 fortunate enough to have money in the bank. We are one of  
25 the few special districts -- levee districts in the area

1 that do. And a lot of that is attributable to the  
2 relationship that we have with our landowners and we're  
3 able to do our maintenance pretty low budget and with  
4 their help.

5 The bigger issue is our expenses are going up  
6 like everybody else. Last year we spent \$33,000 in  
7 maintenance. It's documented on our tax rolls.

8 That's about the first time -- I've been on the  
9 board for about 15 years -- that we've actually spent more  
10 than we've ever taken in. And this is a numbers person,  
11 financial kind of guy I am. That is a tipping point for  
12 us to realize that we have longer term issues here to  
13 address.

14 --o0o--

15 MR. LARRABEE: Maintenance. I was out the last  
16 three days driving around. This is the levee, north of  
17 Butte City. And I have a few slides here. This is what I  
18 consider good maintained levee, well maintained levees, if  
19 you will. This is the inside, the river side of the levee  
20 looking south.

21 Annually we come in. We engage the Butte City  
22 Fire Department. We burn the levees. We farm, if you  
23 will, the levee. We plant wild oats. We usually spray in  
24 the spring. It's an oxy-type herbicide that will cut down  
25 any kind of broad leaves of trees that grow. The wheat --

1 roads grow up, they dry up. We burn them in summer. It  
2 leaves a clean slope. The seeds go back down. They  
3 regenerate themselves from year to year.

4           This is very beneficial. And maybe you know  
5 this, but it provides a clean slope. The fire keeps woody  
6 perennial vines, berries-type plants from growing on the  
7 levees. And those all have negative impacts as far as  
8 flood control. Not only do you get burrowing animals and  
9 things that live in them. But the root balls and the  
10 trees and stuff, they cause their own problems.

11           When it's clean like this -- there are a lot of  
12 trees in the area. The raptors can see the burrowing  
13 animals and kind of control it. That way the whole thing  
14 kind of works.

15                               --o0o--

16           MR. LARRABEE: This is another picture that  
17 was -- this was -- this is all private property, mind you.  
18 This is another picture south of that area and some  
19 other -- another landowner. This is inside the levee.

20           What's important here is you see the road. Our  
21 maintaining area is the slope of the levee, which is the  
22 DWR's area, plus the ten feet either side we maintain the  
23 toe. And when you burn these things, this toe is  
24 important because we can get our equipment down on the  
25 bottom of the levee. You can light the fire. It burns up

1 to the top. It burns hot, it burns fast. It kills any  
2 kind of tree or small shrubs that might grow there and  
3 leaves the grass seeded for next year.

4 When you don't have this toe, you have to light  
5 from the top and the fire doesn't get down there and it  
6 causes other problems and other maintenance. It takes us  
7 longer to do this and get things done.

8 --o0o--

9 MR. LARRABEE: This is another picture of that  
10 same area, but looking south. Again, you can see the  
11 road. See the road there? There's a toe in there. And  
12 we drive along there and we light this thing.

13 --o0o--

14 MR. LARRABEE: This is another area. This is  
15 outside the levee, the land side, if you will. This is a  
16 bean field here the farmer was harvested. This was  
17 alfalfa just two years ago. But he maintains his road  
18 around the edge. It gives us access in there and we can  
19 light the thing and we can burn it and it maintains. It's  
20 clean and free of debris. That's what we like to see.

21 Now, the problem is, with some of these agencies,  
22 after it's been passed through, the maintenance is not  
23 keeping up. This is a picture of what I called the afting  
24 unit. It's been since transferred to Fish and Wildlife.  
25 It's just south of Afton about a mile on the levee on the

1 river side.

2           And to the right here they just spent money to  
3 plant all this. They drilled wells if there wasn't the  
4 one they already made there. Installed drip lines. This  
5 is probably 400 acres. This is a tremendous amount of  
6 money that was spent. And they did all this work. And we  
7 have all this debris on the side that was never cleaned  
8 up. These are blackberry vines. You can see spots of  
9 Johnson grass up there. And in the summertime in years  
10 past this has grown up right to the side of the toe of the  
11 levee. We cannot physically drive our trucks in here and  
12 maintain this thing for fear of having the fire get out on  
13 their side and -- or us having peril to our people. I  
14 mean it's not the first time we've had burn accidents out  
15 there. It's difficult to burn from the top down.

16           And so this is what you get. This begins to  
17 accumulate.

18                               --o0o--

19           MR. LARRABEE: If you turn around and look to the  
20 south. This is the same place looking south. You can see  
21 trees and vines and shrubs. And you can see kind of the  
22 end of our fire. Doesn't even make it down but about  
23 halfway down the slope of the levee.

24                               --o0o--

25           MR. LARRABEE: This is the same property

1 continuing south. The jungle is encroaching. Two or  
2 three years ago we spent about \$10,000 and hired a dozer  
3 to drive along the inside of this levee and doze back the  
4 toe, so that we could get our trucks in there and burn  
5 this thing. It's not been maintained. It's already grown  
6 back. And this stuff right here is probably six or eight  
7 feet tall now. You cannot drive in here. And, once  
8 again, our fire is not getting down to the bottom and this  
9 stuff is slowly encroaching back up on top of the levee.

10 --o0o--

11 MR. LARRABEE: Same property, a little farther  
12 south. Same thing. No toe.

13 --o0o--

14 MR. LARRABEE: Then I drove up. This is across  
15 the bridge from Butte City, the Del Norte unit. I am now  
16 on the west side of Sacramento River, just north of the  
17 Butte City Causeway. And so I parked here just behind the  
18 sign and I walked in this place.

19 --o0o--

20 MR. LARRABEE: To the right here, just passed the  
21 gate. See that car? That's the Butte City Causeway. And  
22 all this jungle and stuff is growing back in here.

23 This is a place inside the river corridor, except  
24 that it's supposed to bypass water. Long before it even  
25 gets out of the Butte City -- or the Butte City -- the



1 overflow area, it affects other landowners. Like I  
2 mentioned, most of our property is in the Butte Basin  
3 overflow area.

4 --o0o--

5 MR. LARRABEE: I'm walking down that road heading  
6 west. There's the causeway again. You can see the riprap  
7 on the bottom. This gets flooding almost every year. It  
8 doesn't take much rain to go into the causeway. But this  
9 is slowly getting grown over, and no one is maintaining  
10 it.

11 --o0o--

12 MR. LARRABEE: I've continued walking about a  
13 half mile now. You can see the vines kind of the edge of  
14 that tree.

15 --o0o--

16 MR. LARRABEE: I stopped about halfway in looking  
17 south. You can see the vines on the tree -- growing up on  
18 the side of the tree. Just past this big tree down here  
19 there are blackberry vines probably 20 feet high now. And  
20 then beyond that another quarter mile is the Sacramento  
21 River.

22 PRESIDENT CARTER: Mr. Larrabee, could you please  
23 try and wrap it up.

24 MR. LARRABEE: Okay. I'm sorry.

25 --o0o--

1           MR. LARRABEE: Looking south, there's an orchard  
2 there that's maintained. I took this for demonstration of  
3 kind of the understory that would be there with an  
4 orchard. That is not there with this riparian habitat  
5 because you have a -- maintained a clean floor and you  
6 have space under there for water to flow.

7                               --o0o--

8           MR. LARRABEE: This is looking back.

9           The point here is this thing is probably about a  
10 mile wide and I think half it is probably chucked up with  
11 debris and not working as it's supposed to.

12                              --o0o--

13           MR. LARRABEE: This is some pictures I took of  
14 the applicant's property that they restored two years ago.  
15 It's all growing together. There's a well. It's  
16 irrigated. This stuff grows very fast.

17                              --o0o--

18           MR. LARRABEE: It looked like that two years ago.  
19 This is a picture back at the Afton unit where I started  
20 this -- with debris on how big this thing is.

21           SECRETARY DOHERTY: May I ask you. Are those  
22 elderberry bushes there?

23           MR. LARRABEE: I don't think so. They're all  
24 kinds of mixed shrubs.

25           SECRETARY DOHERTY: Oh, but that is just shrubs

1 and things like that?

2 MR. LARRABEE: Yeah, whatever they -- they  
3 planted mix of -- probably of their stuff.

4 --o0o--

5 MR. LARRABEE: This is the north gate on River  
6 Partners' property looking to the Llano Seco, where we get  
7 no maintenance at all. Trees are on top of the levee.

8 --o0o--

9 MR. LARRABEE: This is coming back down south  
10 again. That doesn't -- that looks pretty good. We can  
11 get over there. We can drive around. We can maintain  
12 that.

13 --o0o--

14 MR. LARRABEE: But then again, you come down a  
15 little farther and there are already issues. This is an  
16 elderberry plant right here, going right on the slope of  
17 the levee.

18 --o0o--

19 MR. LARRABEE: These are the orchards that  
20 they're going to take out. And we'll lose understory once  
21 they grow together.

22 --o0o--

23 MR. LARRABEE: Another picture.

24 --o0o--

25 MR. LARRABEE: Point all here is is it takes

1 maintenance. It takes maintenance long term. You can't  
2 just do this and walk away. People spend all this money.  
3 They drew wells. They have pumps. They make diesel.  
4 They have employees. They have budgets. They have  
5 everything. But when it gets transferred to these federal  
6 and state agencies, it seems like it all stops. And we're  
7 left holding the bill.

8           The property comes off the tax rolls and we're  
9 proportionately being -- receiving less and less money  
10 every year. And the remaining landowners are there to  
11 foot the cost.

12           PRESIDENT CARTER: Are you ready to wrap up?

13           MR. LARRABEE: I'll hurry.

14           PRESIDENT CARTER: Thirty seconds.

15           MR. LARRABEE: Okay, then. Elderberries. These  
16 are some pictures on the levee. We can't burn. You can  
17 see the grass, the stuff we can't get around.

18                               --o0o--

19           MR. LARRABEE: Same place. This is an elderberry  
20 over here. We can't get in here for fear of Environmental  
21 Species Act violations. This levee goes unmaintained  
22 here.

23                               --o0o--

24           MR. LARRABEE: This is another area looking back  
25 in the jungle. We can't get through these plants.

1                               --o0o--

2               MR. LARRABEE: This is at the Butte City ramp on  
3 private property. This is the one growing on the slope of  
4 the levee that we were threatened ought not disappear.  
5 That thing's been for ten years.

6                               --o0o--

7               MR. LARRABEE: I walked up underneath it. And  
8 this is what you get when this stuff grows. Those are  
9 squirrel holes there and burrowing critters doing that.  
10              I almost stepped on a gopher snake too while I  
11 was in there. I ran out film. I would have taken that.

12                              --o0o--

13              MR. LARRABEE: Another elderberry.

14                              --o0o--

15              MR. LARRABEE: There's two of them there at the  
16 Butte City Bridge.

17                              --o0o--

18              MR. LARRABEE: And this is probably my favorite  
19 one. This is back on top of the Butte City Causeway  
20 driving back. These two -- these are elderberry bushes  
21 right here. And growing not only -- well, however high  
22 that is -- 20, 30 feet, but they're physically growing out  
23 in the line of traffic there. For fear of touching these  
24 things -- I mean the only reason they get pruned back is  
25 because people move their equipment and they might clip

1 the edges.

2 Now, I'm not -- I don't want to be funny, but I  
3 mean I feel sorry for this beetle because not only does he  
4 negotiate ten feet of water flow under there, but he's got  
5 to go through two lines of traffic just to survive.

6 I mean the point is those probably shouldn't be  
7 there.

8 PRESIDENT CARTER: Thank you very much.

9 MR. LARRABEE: Okay. Could I -- one more  
10 comment, long-term maintenance --

11 PRESIDENT CARTER: Quick.

12 MR. LARRABEE: This is a big deal.

13 I have a map here I picked up at Del Norte. It  
14 has about 15 miles of these properties, all in just one  
15 page. There are 15 of these properties inside the levee  
16 corridor that are now federally owned, most of them closed  
17 to public access.

18 No one -- I've asked when we were here in 2003 to  
19 have some concerns addressed for cumulative impacts. I  
20 have yet to hear that. This will make a difference. This  
21 property on the screen right here alone will probably --  
22 is edge to edge over a mile and a half wide. This of  
23 itself will make a big difference.

24 This property here is one that I have concerns  
25 about later on as being restored. Our levee terminates

1 right about there. The Butte Basin overflow area flows  
2 out here. And all of these projects in here are going to  
3 make a difference. It's all coming out. I know it's  
4 three-miles wide. But this project alone was estimated  
5 could defer the flow up to 3500 acre-feet -- or, excuse  
6 me -- cfs. If you do the math on that, that's 7,000 cfs  
7 in 24 hours.

8 In 1989, nevertheless, we had a big flood event.  
9 Road Z was closed for 29 days. That's equivalent to  
10 Folsom Lake on top of everything that's there running  
11 through this area.

12 It is significant. It costs money to own  
13 property. And we like to see people maintain it.

14 PRESIDENT CARTER: And thank you.

15 MR. LARRABEE: I'll stop.

16 If you have any questions, I'm happy to try and  
17 answer them.

18 PRESIDENT CARTER: Any questions for Mr.  
19 Larrabee?

20 BOARD MEMBER BURROUGHS: What recommendations  
21 would you propose?

22 MR. LARRABEE: Well, we'd like to see a long-term  
23 funding plan in place to replace the money that we're not  
24 going to receive in the future once the program's -- once  
25 these properties are transferred.

1           Specifically, until this elderberry thing is  
2 settled from the top -- I admire the approach from the  
3 bottom up and the safe harbor. That's all fine and dandy.  
4 But there's nothing that protects the neighboring  
5 landowners.

6           This bush is either endangered or it's not. And  
7 the federal people have to make that decision. Until that  
8 happens, it impacts -- the radiating effects of this is  
9 not going to change one bit. And this is on -- the way  
10 it's proposed now, it's just going to propagate them and  
11 spread them more, and we're still going to have the same  
12 problem, in my opinion.

13           PRESIDENT CARTER: Any other questions?

14           VICE PRESIDENT HODGKINS: Help me understand the  
15 maintenance funding issue a little better than I do. Do  
16 you normally expect the property owners to maintain the  
17 road along the toe of the levee that enables you to drive?

18           MR. LARRABEE: We asked -- and most of them do it  
19 voluntarily anyway -- that they disk a firebreak on the  
20 river side. And most of them have roads because they're  
21 all farming, for one reason, on the land side. And that  
22 is just done. They don't like the fire getting out on  
23 their jungle either.

24           VICE PRESIDENT HODGKINS: Okay. The second  
25 question. Do you assess River Partners now currently



1 anything to pay for your maintenance costs?

2 MR. LARRABEE: I believe they still pay property  
3 taxes, as they -- would any other private landowner now.  
4 If I recall, they bought that for 1.7 million bucks  
5 something. One percent is about 17,000 a year. But once  
6 it is transferred to a federal or state agency, that  
7 funding will cease.

8 VICE PRESIDENT HODGKINS: I understand that. But  
9 the funding for Levee District 3, where does it come from?

10 MR. LARRABEE: It's paid in through the 1  
11 percent. And there is a formula, it's prorated back  
12 proportionately to the special districts, depending on  
13 where the area of the assessment -- whatever that ground  
14 may be.

15 VICE PRESIDENT HODGKINS: Okay. So it's hard to  
16 determine exactly what it is. But we could do that if  
17 went and sat down with the county?

18 MR. LARRABEE: You could do that, yes. And it's  
19 not just the Levee District 3, that we're in a certain  
20 apportionment area. I mean there's a fire department,  
21 there's Levee District 2, which is on the adjacent side.  
22 Wherever those areas may be.

23 MR. CARLON: Excuse me. We calculated that exact  
24 number. It's a dollar eight-one a year. So we have the  
25 math if you'd like to see it. Our assessment for that

1 portion is \$1.81.

2 MR. LARRABEE: One eighty-one?

3 MR. CARLON: One eighty-one.

4 VICE PRESIDENT HODGKINS: You get quite a deal.

5 MR. LARRABEE: You know, that may be. I don't  
6 know. I'm not prepared to debate that. But there  
7 are -- we're talking more than a dollar eighty-one. We're  
8 talking long term here. And we're also talking going back  
9 and trying to fix some of these problems that we continue  
10 to have now, straightening them out as well.

11 PRESIDENT CARTER: Thank you very much.

12 Mr. Sutton.

13 MR. SUTTON: Chairman, members of the Board.  
14 Jeff Sutton, Family Water Alliance Executive Director.  
15 And I appreciate the opportunity to address you on this  
16 issue today. I'll try and be very brief.

17 These restoration projects, there's been many  
18 townhalls. Some of you have attended them during many  
19 impacts, impacts to the ability of local governments to  
20 provide basic services when it goes off the tax rolls.  
21 Neighbor issues, issues to the local economy when you're  
22 taking ag land out of production, closing down our  
23 factories and rural areas.

24 But really your issue to deal with here today is  
25 the flood control impacts. And that's what I'm here to

1 focus on.

2           This increased vegetation, planting of  
3 elderberries, you've heard in many presentations from  
4 representatives from Reclamation District 108; Westside  
5 Levee District; Mike Hardesty, the President of Central  
6 Valley Flood Control Association, cause many problems for  
7 levee districts, DWR to maintain the levees.

8           As a matter of fact, recently there's a -- I  
9 guess there's a recommendation out after a study was done  
10 to delist the elderberry beetle because there is enough  
11 habitat out there already. And actually I think it was  
12 Joe Countryman quoted in the Sacramento Bee -- I'll  
13 paraphrase -- basically saying hallelujah.

14           (Laughter.)

15           MR. SUTTON: And that brings up one point right  
16 there, is the potential delisting. There is -- there's  
17 enough out there. And, you know what, if they think they  
18 need more after the delisting, they can plant all they  
19 want and there won't be any regulatory concerns.

20           So the elderberry beetle has cost -- I mean the  
21 most recent critical area fixes, they've cost 5 to \$7,000  
22 a linear foot. Half of that's been environmental. I'm  
23 sure some of that's attributable to the elderberry. It's  
24 been a burden on the flood control. And let's not put  
25 more in the floodways. And let's not potentially put

1 these impacts on neighboring farmers.

2           There's a lot of people in townhall meetings,  
3 folks are discussing safe harbor projects, to address  
4 planting elderberries. The Safe Harbor Program is really  
5 built to encourage people to plant restoration of  
6 endangered species habitat on their own property. It's  
7 not really designed to protect the neighbor. There is the  
8 ability, but most of the neighbors don't want to  
9 participate in these types of programs. I know folks that  
10 have attended SRCA meetings and heard that over and over  
11 and over again. So I don't really think that that is a  
12 real carrot for folks here.

13           Regarding the flooding, you saw a well groomed  
14 orchard. And it's going to be replaced with what will  
15 eventually become riparian jungle.

16           Mr. Countryman's a well respected engineer, and I  
17 won't quarrel with his math. But these cumulative effects  
18 of project after project, and there's a number -- there's  
19 eight projects looking to go into Colusa County right now.  
20 I know there's a number in Glenn County. The U.S. Fish  
21 and Wildlife Service has another I believe it's a hundred  
22 thousand acres they would like to restore in the area in  
23 the next 25 years. At some point we need to include  
24 maintenance as part of this.

25           And Sac River Partners is, in essence -- I mean

1 they're saying, you know, "We want to be treated the same  
2 as any other landowner." But they're buying that property  
3 in most cases with taxpayer dollars, and it's going to --  
4 they're serving as an escrow agent, for all practical  
5 purposes, it's akin to that, and it's going to go to the  
6 state or federal resource agencies.

7           And you're not going to have a whole lot of  
8 success when these problems come up telling them what to  
9 do on the property that's then in their hands unless you  
10 put those type of deed restrictions or long-term funding  
11 requirements in it now when you have your opportunity.

12           So I just think this is a real opportunity. It's  
13 a totally different situation with a private landowner.  
14 You have the ability to come in and require them to do  
15 things, put liens on their property. You're not going to  
16 have that with the Fish and Wildlife Service or Fish and  
17 Game.

18           So this is a real opportunity. Your staff has  
19 recommended that the forward looking -- trying to look  
20 forward and trying to design something that will avoid  
21 problems in the future, because they all seem them. We  
22 see them and Levee District 3 sees them. So I encourage  
23 you to follow your staff recommendation, please.

24           Thank you.

25           PRESIDENT CARTER: Thank you.

1 Ms. Hillery.

2 MS. HILLERY: Hi. I'm Cyndi Hillery, Legislative  
3 Director for Assemblyman La Malfa, who represents this  
4 area. And I'm here just to pass on Mr. LaMalfa's deep  
5 concern about anything that is going to interfere with a  
6 levee district's opportunities and ability to maintain  
7 flood control in that area the way that they feel it's  
8 most necessary to maintain it. They're there on site.  
9 They know what they need and what they're not getting.  
10 And he really wants to emphasize that it's important that  
11 we all look to the local area, to the local government  
12 agency that's dealing with this on a day-to-day basis and  
13 listen to what they have to say.

14 So that's all.

15 PRESIDENT CARTER: Thank you.

16 I have no other cards on this item.

17 Any more discussion or questions from the Board?

18 MR. CARLON: Could I speak one more time, please?

19 PRESIDENT CARTER: Yes. Mr. Carlon.

20 MR. CARLON: There's a couple things. I don't  
21 know if you guys need to see this.

22 John Carlon, River Partners.

23 Again, I'm just coming back with the fairness  
24 question. And I understand there's a lot of issues with  
25 levee maintenance, there's a lot of issues with

1 landownership and land-use decisions. But, really, my  
2 understanding here today is what we're talking about is an  
3 encroachment permit for our property, not properties up  
4 and down the river, our property. And I think one thing  
5 that was left out of Levee District 3's discussion is  
6 there's private property owners out there that aren't  
7 necessarily doing the most stellar job in the world.

8           And if you look at our parcel -- the parcel that  
9 is in question right here, as Joe pointed out, it's on the  
10 landward side of the levee. We saw photographs of certain  
11 areas of that but if another portion of that levee -- if  
12 you just walk over our property, stand on the top of the  
13 levee and look to the west towards the river, there's a  
14 private, unpermitted, to my knowledge, levee that's  
15 constructed that's at -- it's perpendicular flow and it  
16 ties in to the levee that Levee District 3 maintains every  
17 year.

18           And so what my question is -- we have a low  
19 velocity area of one -- less than one foot per second on  
20 the dry side of the levee that's causing all kinds of  
21 grief for Levee District 3, when a private property owner  
22 on the other side of the levee has an unpermitted, to my  
23 knowledge, full-size private levee running perpendicular  
24 to flow, which has been pointed out to the State  
25 Reclamation Board in the past, and there's been no action

1    whatsoever.

2                So that property owner's not being asked to put  
3   money up.  He's not being asked to take down his private  
4   levee.  And to my knowledge, I've never heard anything  
5   about any enforcement activities from the Rec Board.

6                So, again, I'm just asking for a fairness issue.  
7   If you'd like to see a picture of this levee, we have it.  
8   It might take a second to load or you can take my word for  
9   it.

10              Is that something you want to see?

11              BOARD MEMBER RIE:  I'll take your word for it.

12              PRESIDENT CARTER:  We'll take your word for it.

13              MR. CARLON:  Okay.

14              MR. LARRABEE:  Where is that -- John, where is  
15   this levee?

16              MR. CARLON:  It's a levee that goes to the  
17   Crane's property.  It ties right in, right in between  
18   those two photographs.

19              MR. LARRABEE:  Chuck Crane?

20              MR. CARLON:  His dad.

21              MR. LARRABEE:  Didn't he donate that to --

22              BOARD MEMBER BURROUGHS:  I think that's a  
23   separate issue.  I think we should stay on the subject and  
24   just discuss the application right now.

25              MR. EFSEAFF:  May I make just a quick statement?



1           PRESIDENT CARTER:   Yes.

2           MR. EFSEAFF:   Dan Efseaff, River Partners.

3           Some of the comments, they're big issues that  
4 have to be addressed. And we all understand. We're  
5 asking for a permit on 136 acres that's well protected  
6 from a flood control standpoint and has a safe harbor  
7 agreement in place.

8           Some of these other issues are beyond our  
9 project. The slides that Mr. Larrabee showed, we only had  
10 a handful that showed our property. And he said it was an  
11 okay looking levee.

12           If it's an issue with Fish and Wildlife or Fish  
13 and Game, it needs to be addressed with those agencies,  
14 not with a private landowner that maybe or may not hand  
15 over the property to those in the future.

16           Thank you.

17           STAFF COUNSEL MORGAN:   Excuse me. Could I ask  
18 you folks to provide the information about that  
19 perpendicular levee to Mr. Rod Mayer, who will raise his  
20 hand in the background. He still has oversight of the  
21 Inspection Division, perhaps through a trickledown theory,  
22 at any rate. And he can let the Reclamation Board know  
23 about the status of that. We don't want to turn a blind  
24 eye to something that you're telling us that there's a  
25 violation.

1 SECRETARY DOHERTY: Dan, I wanted to ask you one  
2 more question. You don't have to get up again. I'll be  
3 able to hear you.

4 You said the Safe Harbor Agreement had been  
5 enacted. Who formulated this? With whom is it  
6 associated?

7 MR. EFSEAFF: Safe harbor agreements are  
8 developed with private landowners --

9 SECRETARY DOHERTY: You don't have to get up. I  
10 can hear you.

11 MR. EFSEAFF: No, just for --

12 BOARD MEMBER BURROUGHS: For the record.

13 SECRETARY DOHERTY: Sorry. I'm sorry.

14 MR. EFSEAFF: Safe harbor agreements are  
15 agreements that are developed between the U.S. Fish and  
16 Wildlife Service and private landowners. So they can be  
17 applied to any species. And it gives a landowner ability  
18 of take, to remove habitat in exchange for doing something  
19 good during the term of the agreement for the species.

20 SECRETARY DOHERTY: So that is separate and apart  
21 from the Sacramento River Conservation Area Forum, because  
22 it has not been --

23 MR. EFSEAFF: Absolutely. This is only an  
24 agreement --

25 SECRETARY DOHERTY: I just wanted to make sure --

1           MR. EFSEAFF: Yeah. And it's already through the  
2 Federal Register. It's been approved. It's a legal  
3 document.

4           SECRETARY DOHERTY: All right. I understand.  
5 Thank you.

6           MR. EFSEAFF: Sure.

7           PRESIDENT CARTER: Any other discussion from the  
8 Board? Questions?

9           We'll entertain motion if not.

10          VICE PRESIDENT HODGKINS: Well, the other  
11 gentleman wants to speak. But I have a question.

12           Is there on your property an easement off the toe  
13 of the levee for a road? And if not, would you be willing  
14 to grant one?

15          MR. CARLON: There is an existing one. It's just  
16 blocked by the -- John Carlon, River Partners.

17           There is a road. We're happy to grant that  
18 easement. The only blockage of that road along the length  
19 of the levee that we own is where the other private levee  
20 connects. Or maybe that's a little south of us.

21           So, yes. Short answer is yes.

22          VICE PRESIDENT HODGKINS: Okay. So you're  
23 willing to grant an easement to either Sacramento/San  
24 Joaquin or --

25          MR. CARLON: I think there's an existing easement

1 on the property right now.

2 VICE PRESIDENT HODGKINS: Okay.

3 MR. CARLON: And the other -- to address the Safe  
4 Harbor Agreement. All the elderberries that were shown  
5 that have grown up on the levee, this Safe Harbor  
6 Agreement allows -- if we plant the 1500 elderberries, the  
7 levee districts, we can go in there, you can cut that  
8 elderberry down, no mitigation, no recourse.

9 VICE PRESIDENT HODGKINS: On your property?

10 MR. CARLON: On our property and on the levee  
11 that's on our property, on either side.

12 VICE PRESIDENT HODGKINS: I understand.

13 PRESIDENT CARTER: Any other questions?

14 BOARD MEMBER RIE: Yeah, staff.

15 Who maintains the floodway? Is it DWR? Is it  
16 Levee District 3?

17 PRESIDENT CARTER: Mr. Bradley.

18 CHIEF ENGINEER BRADLEY: This is not a floodway.  
19 It's a natural overflow area. So there's no maintenance  
20 involved in this. It's a normal -- or a natural overflow  
21 area. It's historically overflowed in this area. It's  
22 part of the adopted plan of flood control. There in  
23 general are no flowage easements through there. And it's  
24 not a designated floodway. But it is a natural overflow  
25 area, where overflow occurs when the rivers come up.

1 SECRETARY DOHERTY: But it doesn't flow over the  
2 levee? It just -- this is just a natural confluence?

3 CHIEF ENGINEER BRADLEY: It overflows north of  
4 the left bank levee, the end of the left bank levee.

5 BOARD MEMBER RIE: Okay. So --

6 PRESIDENT CARTER: So where the project levee  
7 starts or ends, depending on your perspective.

8 BOARD MEMBER RIE: Okay. So is this land within  
9 the jurisdiction of Levee District 3?

10 CHIEF ENGINEER BRADLEY: Are you talking about  
11 the project itself that they're discussing?

12 BOARD MEMBER RIE: Yes.

13 CHIEF ENGINEER BRADLEY: I believe part of it is,  
14 but not all of it. And Levee District 3 maybe could  
15 answer that more definitively. But I believe part of it  
16 is, part of it is not.

17 PRESIDENT CARTER: Mr. Larrabee, would you like  
18 to address that question, please?

19 MR. LARRABEE: I'll be brief.

20 When the application was first made in 2003, I  
21 believe it was considered in, I know for sure that the  
22 existing -- or the proposed project today is, it may  
23 encumber some of the existing restoration that was done  
24 two years ago.

25 I just want to make sure that you understand

1 Levee District 3. Our objective is to maintain the levee  
2 when DWR isn't on the toe. I don't know anything about  
3 this other levee. Or I don't know that we need to go  
4 there.

5           The point is, we've talked to these other federal  
6 and state agencies. And the reason I showed you these  
7 slides is the work isn't getting done. And the bill is  
8 mounting. And it's just a matter of time before we have  
9 more and more problems. And we need a mechanism in a  
10 place to ensure that we not only have the money to do  
11 this, but at least we're able to before we have a major  
12 event. And that's what we're asking.

13           BOARD MEMBER RIE: Thank you.

14           MR. LARRABEE: Thank you.

15           BOARD MEMBER RIE: Scott, I have a question for  
16 you.

17           Does this encroachment permit require the  
18 endorsement of a levee maintenance district on Section 7  
19 of the --

20           STAFF COUNSEL MORGAN: I'll let Steve answer  
21 that.

22           CHIEF ENGINEER BRADLEY: All applications require  
23 the endorsement of the local maintaining agency. This  
24 property is -- as you heard Mr. Carlon say, part of their  
25 property is on the levee, and is within the area

1 maintained by LD3. Therefore, it requires an endorsement  
2 of LD3. They had not endorsed this project. That is one  
3 reason that it has been brought to the Board.

4 STAFF COUNSEL MORGAN: I don't -- the lack of an  
5 endorsement doesn't prevent the Board from granting a  
6 permit. But an endorsement is required -- if an  
7 endorsement is required, you have to go to the local  
8 agency to try to get the endorsement. And the Board must  
9 consider why the local agency has not given its  
10 endorsement.

11 BOARD MEMBER RIE: So we just need to consider --  
12 even if they don't endorse it, we just need to consider  
13 why?

14 STAFF COUNSEL MORGAN: Yeah. And you can accept  
15 their lack of endorsement as a reason for not granting the  
16 permit. Or you can grant the permit not -- if there's a  
17 lack of endorsement, for overriding reasons.

18 BOARD MEMBER RIE: Okay.

19 CHIEF ENGINEER BRADLEY: If there's no  
20 endorsement, then it becomes a Board decision even if  
21 there's nothing else. If the project would normally be  
22 approved by staff, if we don't get that endorsement, it's  
23 a project -- an application that was brought to the Board  
24 for decision, so they can consider all the factors.

25 PRESIDENT CARTER: So, members of the Board,

1 what's your pleasure on this particular item? The action  
2 item is to consider Application No. 17659-A, to plant  
3 mixed riparian forest, elderberry and woodland, valley  
4 oaks and savanna, and grassland on 136 acres within Butte  
5 Basin.

6 BOARD MEMBER BURROUGHS: I move to deny.

7 PRESIDENT CARTER: Okay. We have a motion to  
8 deny the application.

9 Is there a second?

10 No second.

11 Okay. Is there any other action the Board would  
12 like to take?

13 VICE PRESIDENT HODGKINS: I'm going to move to  
14 approve it with a bunch of new conditions.

15 So you guys listen carefully.

16 First of all, the new condition would be that you  
17 grant an easement over 15-foot roadway at the toe of the  
18 levee to LD3; that you commit in writing some kind of an  
19 agreement that before you transfer this property, you will  
20 clear that roadway of all vegetation and burn the levee;  
21 and that, third, you agree before you transfer this  
22 property that you will pay to Levee District No. 3  
23 \$15,000 -- that's a number picked out of the air, but I'm  
24 going to just put it on the table -- to offset their costs  
25 if -- to offset their future costs in maintaining the



1 levee through your property if the property's transferred  
2 to a government agency.

3           Now, would you accept those? I realize you're  
4 being singled out, and partly because maybe I think you  
5 might be good guys and we might get away with starting  
6 this out with you. But the issue we have here is one that  
7 we just can't continue to let go when really we are  
8 charged, the Board, with the cumulative impacts of what's  
9 happening in this system. And, you know, there should  
10 have been a study done. And I'm not sure what the  
11 cumulative impacts are. But I sympathize with and  
12 understand some of the problems that the local maintaining  
13 districts are having.

14           And, you know, you guys are going to have to  
15 figure some other way to raise money eventually, because,  
16 slowly but surely, you're going to get cut out of property  
17 tax revenue.

18           But I don't think that's an unreasonable thing.  
19 It may be illegal, in which case I would hope the attorney  
20 would tell me that.

21           But that's what I would propose.

22           PRESIDENT CARTER: Okay. We have a motion on the  
23 floor from Butch. I got the -- move to approve with the  
24 condition of granting a 10-foot easement toe of the levee?

25           BOARD MEMBER BURROUGHS: Fifteen.

1 VICE PRESIDENT HODGKINS: Fifteen.

2 PRESIDENT CARTER: Fifteen, I'm sorry. A 15-foot  
3 easement.

4 I missed the second one. And the third one was  
5 to pay Levee District 3 \$15,000 for their future costs of  
6 maintaining their portion --

7 VICE PRESIDENT HODGKINS: -- upon the sale or  
8 transfer of the property to a government agency.

9 PRESIDENT CARTER: And what was number 2?

10 VICE PRESIDENT HODGKINS: Number 2 is clear the  
11 easement and burn the levee prior to transferring the  
12 property to a government agency.

13 Is that an unreasonable -- totally unreasonable  
14 thing to ask from the environmental perspective?

15 MR. CARLON: No. The -- you know, first off I  
16 appreciate your approach to try and find a solution. And  
17 that's really what we'd like to do too, because I think,  
18 you know, these problems are going to keep reoccurring.  
19 And I'm just -- the first two are easy for us to do, with  
20 the understanding we could get a burn permit. So, you  
21 know, I'd have to put that provision in there -- proviso.

22 MR. LARRABEE: What do you call the levee  
23 district?

24 (Laughter.)

25 MR. CARLON: The last one, the 15,000, we'd have

1 to try and figure out a way to do that. But we're not  
2 opposed to the idea of trying to sort that out. I just  
3 legally am not sure, you know, if we can do that.

4 VICE PRESIDENT HODGKINS: Well, I'm not asking  
5 you to put the money up now. I'm asking you to put it up  
6 on the transfer of the property. And if somebody wants  
7 the property, I'll bet they can find 15,000.

8 MR. CARLON: Right. On a \$1.7 million deal, they  
9 should --

10 VICE PRESIDENT HODGKINS: -- It's minuscule.

11 MR. CARLON: Right. It's not a huge deal.

12 VICE PRESIDENT HODGKINS: Yeah.

13 SECRETARY DOHERTY: And I would second that  
14 motion.

15 PRESIDENT CARTER: We have a motion and a second.

16 Is there any discussion?

17 Okay. I would ask General Manager Punia to call  
18 the roll please.

19 GENERAL MANAGER PUNIA: Board member RoseMarie  
20 Burroughs?

21 BOARD MEMBER BURROUGHS: No.

22 GENERAL MANAGER PUNIA: Board Member Lady Bug  
23 Doherty?

24 SECRETARY DOHERTY: Yes.

25 GENERAL MANAGER PUNIA: Vice President Butch

1 Hodgkins?

2 VICE PRESIDENT HODGKINS: Yes.

3 GENERAL MANAGER PUNIA: Board Member Teri Rie?

4 BOARD MEMBER RIE: No.

5 GENERAL MANAGER PUNIA: President Ben Carter?

6 PRESIDENT CARTER: No.

7 So the motion fails 3 noes to 2 ayes.

8 Okay. Are there any other proposals from the

9 Board?

10 BOARD MEMBER RIE: I think we ought to continue

11 this item. I'd like to see Levee District 3 and the

12 applicant get together and talk and then come back to us.

13 PRESIDENT CARTER: Okay. And I've got a

14 question.

15 Is that going to yield any kind of agreement

16 between you guys? I know that you have been talking for a

17 number of years on this particular item. Are we going to

18 make any progress? Is that worthwhile? Is that a good

19 use of time?

20 MR. EFSEAFF: Dan Efseaff, River Partners.

21 That's correct, we've been talking on and off.

22 This first issue in 2003. I think that permit application

23 was actually 2001. We've been discussing this since May

24 of this year.

25 I think there's something targeted that we can

1 discuss. We're certainly open to it. But I'm not sure  
2 what direction that we go now. The issues that they have  
3 really, if you look at the slides, are with Fish and  
4 Wildlife, it's with other landowners. I'm not sure why  
5 one landowner that represents a fraction of their levee  
6 district area should bear the burden for the sins of  
7 others along the way.

8           It's a fairness issue.

9           We're open to discussing, but I would like to  
10 have some targeted issues to discuss.

11           PRESIDENT CARTER: Okay.

12           SECRETARY DOHERTY: You say that you're being  
13 targeted unfairly. However, your project is different  
14 than all the other landowners in the area. So therefore  
15 it is a different subject matter.

16           MR. EFSEAFF: We --

17           PRESIDENT CARTER: I don't think we really need  
18 to go there right now at this discussion. And the hour's  
19 getting long here.

20           At this point, is it the Board's wishes to  
21 continue this item? I'm hesitant to do that, because I'm  
22 not sure that the applicant or the neighbors can come to  
23 any kind of an agreement and come back to the Board.

24           BOARD MEMBER RIE: I don't want to make a motion  
25 to continue. I would just rather them try to work it out.

1 And if they can, they can come back before the Board any  
2 time.

3 PRESIDENT CARTER: Okay. So the application as  
4 of right now is -- what would be the status? Is it on  
5 hold or is it denied?

6 BOARD MEMBER BURROUGHS: It's denied.

7 STAFF COUNSEL MORGAN: Well, my understanding  
8 would be -- Mr. Hodgkins made a motion to amend the  
9 proposal. The Board did not accept the amended language.  
10 So it's really the Board's decision is this still alive or  
11 dead? If the Board feels that the matter is closed, it's  
12 closed. If you feel that it's still alive, it's still  
13 alive.

14 PRESIDENT CARTER: What's the Board's pleasure?

15 BOARD MEMBER BURROUGHS: Dead.

16 SECRETARY DOHERTY: Dead.

17 BOARD MEMBER RIE: I think they should have an  
18 opportunity to come back.

19 PRESIDENT CARTER: Okay.

20 VICE PRESIDENT HODGKINS: I'd like to see them  
21 have an opportunity to come back. I think, unfortunately,  
22 we may have given somebody too much leverage over somebody  
23 else. I don't know. But you guys try and work it out.

24 PRESIDENT CARTER: Okay. We'll remain open to  
25 this. I'll leave it to staff as to whether or not they

1 have to submit a new application for this or they can  
2 resubmit the existing one. But for now, we'll -- the item  
3 is, let's say, tabled until the Board decides to bring it  
4 back on the agenda.

5 Thank you.

6 Now we're on to -- actually we probably ought to  
7 take about a ten-minute break.

8 So we'll be back here in ten minutes to continue  
9 with Item 14.

10 Thank you.

11 (Thereupon a recess was taken.)

12 PRESIDENT CARTER: Ladies and gentlemen, please  
13 take your seats. Let's continue.

14 We are on Item 14, Permits.

15 14A is Permit No. 17979-BD, Three Rivers Levee  
16 Improvement Authority, Bear River, Yuba County:

17 To consider if the agreement between the  
18 permittee, Three Rivers Levee Improvement Authority, and  
19 the U.S. Fish and Wildlife Service meets the flood  
20 conveyance maintenance requirement of Special Condition  
21 14, which would allow elderberry shrubs to be planted at  
22 the project site.

23 Our buddy, the elderberries.

24 Mr. Bradley.

25 CHIEF ENGINEER BRADLEY: Good afternoon. Steve

1 Bradley, Chief Engineer to the Reclamation Board.

2 We just repeated the issue. The facts are before  
3 the Board, and that's to approve or disapprove the  
4 agreement with Fish and Wildlife Service. These  
5 agreements are biological opinions that are issued through  
6 the Section 404 process of the Clean Water Act. And they  
7 have allowed take.

8 When I wrote the report and made a  
9 recommendation, I was unsure as if these agreements  
10 allowed that take -- incidental take provision to be  
11 transferred to the Department of Water Resources, who's  
12 the ultimate maintaining agency for this area -- for the  
13 channel area here.

14 And since then, in fact, as of this morning, or  
15 yesterday actually, a letter was received from the U.S.  
16 Fish and Wildlife Service that appears to allow incidental  
17 take authority to be transferred to the Department of Fish  
18 and Game.

19 I think I'm going to ask Board counsel to comment  
20 on that. This is more of a legal issue at this point than  
21 it is an engineering issue. And if he's agreeable that  
22 Fish and Wildlife statement allows incidental take to be  
23 transferred to the Department of Water Resources, I will  
24 proceed from there.

25 PRESIDENT CARTER: Okay. Mr. Morgan.



1           STAFF COUNSEL MORGAN: Yeah, I got the letter  
2 sent to us yesterday afternoon by Three Rivers and had a  
3 chance to look at it. And it says, as clearly as I think  
4 we can expect the federal agency to say, that in fact the  
5 biolog -- the incidental take authorized in the two  
6 biological opinions would extend to the Department as long  
7 as the Department and Three Rivers implemental  
8 conservation measures in terms of conditions is described  
9 in the documents. That's what they say at the end of the  
10 first paragraph on page 2.

11           And one of the other conditions on the first  
12 sentence of the last paragraph of page 3, the Service  
13 agreed that it would not seek additional compensation for  
14 elderberry shrubs that were removed in order to maintain  
15 required flood conveyance parameters.

16           So I think those are the two things that the  
17 Department and Board staff were concerned about. And I  
18 think the Service has very clearly answered them in the  
19 affirmative that our concerns are addressed.

20           CHIEF ENGINEER BRADLEY: That was my reading of  
21 this letter. It was very clear that the authority had  
22 been transferred or was transferable to the Department of  
23 Water Resources. This is about as clear a statement as  
24 I've ever seen from the Fish and Wildlife Service.

25           So with that, my recommendation, although

1 originally for denial, would be for approval. I think it  
2 handles our concerns about the ability to maintain the  
3 floodway.

4           On the transference -- you know, there's been  
5 some question that transferring or a propagation of  
6 species downstream. The O'Connor Lake agreement that this  
7 Board approved I believe in March-April timeframe actually  
8 covers the area downstream of this on the Feather River  
9 all the way to the Sutter Bypass. So downstream  
10 propagation at least has been covered for a certain reach  
11 of the river.

12           I have had -- I do have some questions with other  
13 issues in this permit. They are not open at the time.  
14 I've talked with the applicant. They are willing to work  
15 with Board staff on those.

16           And so at this time my recommendation is for  
17 approval.

18           PRESIDENT CARTER: Okay. Any questions of Mr.  
19 Bradley --

20           BOARD MEMBER BURROUGHS: Yes.

21           PRESIDENT CARTER: -- or Mr. Morgan?

22           BOARD MEMBER BURROUGHS: Both. Thank you.

23           Mr. Bradley, while there is some language in here  
24 that's welcome in having the transfer, how can 15,000  
25 elderberry bushes not be an effect on the floodway system

1 and having to maintain that down the road? Even if we  
2 were given permission, isn't that an enormous amount of  
3 elderberry bushes to have to deal with?

4 CHIEF ENGINEER BRADLEY: Well, there's a total of  
5 130,000 species being planted on this acreage. The  
6 hydraulic modeling assumed a very high resistance in that  
7 area. They're going -- I asked for some additional  
8 information on the real impacts of that and what would  
9 happen if their roughness value or what they call the  
10 Manning's N value is too low.

11 I don't expect much change. There's a lot of  
12 backwater effects in this area when the Feather River is  
13 up and this area floods. And so the water doesn't really  
14 flow real fast through there.

15 The setback of the levee has widened the  
16 floodway. That's where they're planning this area.  
17 That's really where the old levee was and behind where the  
18 old levee was. So it's basically out of what would have  
19 normally been the adopted plan of flood control, which has  
20 been modified by the setback levee.

21 Does that answer your question?

22 Hydraulically it's fairly neutral. I did ask for  
23 some runs to be looked at to see if the value -- the N  
24 value they assumed was reasonable. And they will do that.

25 BOARD MEMBER BURROUGHS: Well, on the second

1 page, on the second paragraph, maintaining in to  
2 perpetuity. How could that not have an impact that would  
3 be long lasting on maintaining?

4 CHIEF ENGINEER BRADLEY: It's not expected to be  
5 maintained, primarily. If we do need to maintain it or if  
6 the agreement with Fish and Wildlife Service says is that  
7 we can go in and maintain that, then we can remove  
8 elderberries if we need to without mitigation being  
9 required. So if there is a long-term impact, we can  
10 address it without having to mitigate that.

11 STAFF COUNSEL MORGAN: If I could interject just  
12 to -- in the law there's a principle called stare decisis,  
13 which is a great economizer of time. And it is that for  
14 something that's been decided, you don't have to go back  
15 and decide it again. And just for the benefit of the  
16 Board, all the peripheral issues regarding the hydraulic  
17 impacts have been addressed earlier.

18 This -- this item here relates only to whether or  
19 not the agreement with Fish and Wildlife is adequate to  
20 address the Board's concern that if any maintenance does  
21 need to be done out there, if, for instance, the area  
22 grows and overgrows too much and the roughness value  
23 becomes too high and it does have an impact on the flow,  
24 that material can be removed without further mitigation  
25 and without any take consequences. And those answers have

1 been provided in the affirmative to the Fish and Wildlife  
2 Service.

3           So that's really the issue before the Board. All  
4 the other issues relating to what the impacts of these  
5 plants in the area are were addressed when the permit was  
6 granted originally.

7           PRESIDENT CARTER: And that's maintenance in  
8 perpetuity?

9           STAFF COUNSEL MORGAN: Well, is that part of the  
10 original permit? I actually don't see where that is.  
11 Where are you reading from? Is it the staff report or --

12           PRESIDENT CARTER: That's the question. I mean  
13 if the elderberries are going to be there in perpetuity,  
14 is the maintenance agreement and the requirements of  
15 Special Condition 14, is that in perpetuity as well?

16           STAFF COUNSEL MORGAN: There is no time limit on  
17 the biological opinion. So they have -- this is not good  
18 until a certain date. So this is good until we go back  
19 and ask for another biological opinion, I assume.

20           CHIEF ENGINEER BRADLEY: That's correct. But  
21 there's Section 404 requires them to create an endowment  
22 or maintenance in perpetuity, and that will be done.

23           PRESIDENT CARTER: So it requires who to create  
24 an endowment? Three Rivers?

25           CHIEF ENGINEER BRADLEY: Yes.

1           PRESIDENT CARTER: So they will be funded?

2           CHIEF ENGINEER BRADLEY: Yes. And the 404  
3 permit -- it sends some of that material I gave you. Also  
4 requires it to be a third party that takes care of it.  
5 And there's a state organization or nonprofit that  
6 actually does that type of work.

7           PRESIDENT CARTER: Does which type of work? Not  
8 the maintenance work. The funding?

9           CHIEF ENGINEER BRADLEY: No, they take the  
10 funding and they take care of the maintenance, if I'm not  
11 mistaken. I'll let Scott Shapiro, counsel for Three  
12 Rivers, discuss this in more detail.

13          MR. SHAPIRO: Let me answer that specific  
14 question. And I have a few other comments later what's  
15 appropriate for applicant.

16          As part of our 404 permit we agreed that we would  
17 create an endowment to maintain this area in perpetuity.  
18 It's about a one and a half million dollar, I think is the  
19 latest number, endowment, we calculated out so that in  
20 perpetuity will generate enough interest and consuming  
21 increasing costs to go in, do occasional mowing, to  
22 maintain the 50-foot vegetation clear area next to the  
23 levee and all of those types of factors. So we're funding  
24 up front the kind of endowment that was talked about in  
25 the last item to make sure that this area doesn't become a

1 problem.

2 PRESIDENT CARTER: Okay. Any other questions of  
3 staff?

4 Maybe we could go to our cards then.

5 Mr. Countryman.

6 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: He  
7 just stepped outside.

8 PRESIDENT CARTER: Okay. Mr. Shapiro.

9 MR. SHAPIRO: Thank you. In light of the hour  
10 and the recommendation from staff, I'm going to be really  
11 brief.

12 I just think in light of the previous item before  
13 this Board, which related to elderberries, it's important  
14 to maybe point out a few things that are a little  
15 different here than the last item, so you can consider  
16 that as you consider this issue.

17 I agree with Mr. Morgan. The issue before you is  
18 whether the agreement, the letter and the biological  
19 opinion from the Fish and Wildlife Service provides  
20 adequate assurance that DWR can come in and do maintenance  
21 that's required. And I just wanted to make sure that you  
22 understand it's not just DWR. It's actually granted to RD  
23 784, Yuba County, California Department of Water  
24 Resources, the Reclamation Board, or any of their agents,  
25 which includes individuals, agencies or organizations

1 engaged in managing this area. So it's very broad. It  
2 includes just about everyone you can think of.

3 We have the 50-foot vegetation clear zone, which  
4 will be between this restoration area and the levee. So  
5 that it should be very easy to maintain and assure that  
6 things are not coming up on the levee. We have the  
7 endowment that we mentioned.

8 We are transferring this land in fee to the  
9 Sacramento/San Joaquin Drainage District, so there's no --  
10 we already basically own it, so there's no private  
11 property that's involved in this issue.

12 Planting these plants is what satisfies the Fish  
13 and Game grants that we are receiving, which is what is  
14 allowing us to fund the setback levee. So this is  
15 important to the overall financing of our program.

16 And just to make sure you understand the scope of  
17 it, this is roughly 250 to 300 acres. So it's a very  
18 large area. And as Steve said, it is the area basically  
19 between the old levee and now where the setback levee is.

20 And if you don't have any questions of me, in  
21 light of the hour I will move on.

22 PRESIDENT CARTER: Any more questions for Mr.  
23 Shapiro?

24 Thank you.

25 Mr. Countryman.



1 MR. COUNTRYMAN: I'll pass.

2 PRESIDENT CARTER: Okay. Mr. Eres.

3 MR. ERES: Thank you, Mr. President, members of  
4 the Board. I know the hour's late. I represent Hoffman  
5 Ranches that are located up in the area there.

6 I may have had some of my questions answered.

7 The location that we're dealing with here is only  
8 the setback levee area. Is that my understanding, Scott?

9 MR. SHAPIRO: Correct.

10 MR. ERES: Only the setback that's --

11 MR. SHAPIRO: And it's a portion of the --

12 MR. REINHARDT: Ric Reinhardt, MBK Engineers,  
13 Three Rivers Program Manager.

14 The area that we're discussing is 600 acres in  
15 total. It includes an existing 300-acre walnut orchard  
16 that's already been removed and the planting of  
17 non-elderberry species that's underway now. And then the  
18 additional 300 acres between the old levee and the new  
19 levee that is also in the process of being planted as we  
20 speak.

21 The one thing that we're not doing obviously is  
22 putting in elderberry. But we are talking about all 600  
23 acres that are within the existing floodway and the area  
24 you've added.

25 MR. ERES: I think that helps answer my question,

1 but I'm not sure.

2           The second point I had to do is with the transfer  
3 of this control. Given the number of people that's just  
4 potentially being transferred to, you have an awful lot of  
5 cooks in the kitchen. Who's in charge? So ultimately at  
6 the end of the day I think there has to be a little more  
7 prioritization of who in fact is in charge to make sure  
8 that the O&M takes place.

9           I know Scott talked about stare decisis. But I'm  
10 concerned about the backwater effect of putting in that  
11 number of species in that location, because I'm still not  
12 sure of whether or not in fact there isn't going to be a  
13 potential backwater problem that could be exacerbated by  
14 the number of plantings. Now, that may be beyond the  
15 scope of this particular agenda item. But I would suggest  
16 that if there are still items to be worked out on the  
17 conditions with staff, you need to take a very clear and  
18 hard look on that point. This is a massive amount of  
19 acreage to be planted and it's in a very sensitive area.

20           Thank you.

21           PRESIDENT CARTER: Thank you.

22           Mr. Bradley.

23           CHIEF ENGINEER BRADLEY: I'd like to answer at  
24 least the ultimate maintenance responsibility.

25           The Board provided assurances to the Corps of

1 Engineers that the project would be operated and  
2 maintained. The state has charged DWR with the channel  
3 and maintenance responsibility within the Sacramento River  
4 Flood Control System. DWR is the entity ultimately  
5 responsible for the maintenance of the channel in this  
6 area. Therefore, that was one reason of my concern as to  
7 whether the incidental take authority applied to the  
8 Department of Water Resources. I believe the Fish and  
9 Wildlife letter has answered that question, at least to my  
10 satisfaction and both counsel's satisfaction.

11 PRESIDENT CARTER: Okay. I have a question for  
12 you, Mr. Bradley.

13 I assume the hydraulic analysis and whatnot  
14 indicates that the carrying capacity with the mature  
15 plantings is adequate. If we discover for some unknown  
16 reason, perhaps climate change, that additional channel  
17 capacity is necessary to provide adequate flood  
18 protection, would we be able to modify our maintenance  
19 practices to decrease the roughness in this and restore  
20 additional channel capacity to this stretch of the Bear?

21 CHIEF ENGINEER BRADLEY: My understanding -- and  
22 you may want to confirm this with Board counsel -- that it  
23 allows maintenance for flood control activity -- for flood  
24 control purposes. Therefore, if we find that the  
25 conveyance is not sufficient there to convey the flows,

1 that we could go in and remove vegetation, including  
2 elderberries, to get that without paying the mitigation  
3 bill as long as the baseline elderberries remain. There  
4 are 1661 baseline elderberries, I believe, and another  
5 15,000 that are planted as restoration. So you could  
6 remove those 15,000 elderberries and other associated  
7 species, I presume, before you would be incurring a  
8 mitigation debt.

9 PRESIDENT CARTER: Do you concur, Mr. Morgan?

10 STAFF COUNSEL MORGAN: Yeah, so long as you  
11 maintain -- I should let Scott Shapiro address this in  
12 detail. But my understanding of the agreement is as long  
13 as you maintain the baseline conditions, as long as you  
14 don't get any worse than that, whatever requirements of  
15 this plan are, you can go in and remove material,  
16 including elderberries, up to that baseline condition.

17 PRESIDENT CARTER: Thank you.

18 Any other questions of staff?

19 Applicants?

20 BOARD MEMBER BURROUGHS: Yeah. On applicants.

21 On the amount of acreages it was stated today  
22 300, and then there was another statement of 600.

23 Is the 600 acres all currently owned? And how  
24 was the land obtained?

25 MR. SHAPIRO: I apologize if I created confusion

1 with the two numbers.

2           Now, 300 acres is between the old levee and the  
3 new levee. About 300 acres was a privately owned orchard  
4 on the waterside of old levee that was in a separate area  
5 from the channel. It flooded once every 15 -- 10, 15  
6 years. That entire orchard has been purchased voluntarily  
7 from the De Valentine family. It is now -- excuse me --  
8 from the -- yeah, the De Valentine family. It is now  
9 owned by Three Rivers Levee Improvement Authority. And it  
10 will be transferred in fee to the Sacramento/San Joaquin  
11 Drain District. So you will have ownership of it.

12           The land between the levees, there's some land  
13 that was purchased in fee voluntarily and some that was  
14 condemned.

15           And as to the condemnation land, there's a  
16 condemnation trial on valuation in January. There was no  
17 contesting the ability to condemn it. The landowner  
18 agreed that it was a legitimate purpose. The only issue  
19 was the amount that we were offering. And he has  
20 requested a trial on that matter, and that will be held in  
21 January.

22           Does that answer your question?

23           BOARD MEMBER BURROUGHS: Yes, it does, because I  
24 was told that there was land that was in litigation over  
25 the condemnation.

1           MR. SHAPIRO: Yeah, the Danna property and  
2 Foster -- and the Foster property were both condemned.  
3 And there's --

4           BOARD MEMBER BURROUGHS: What were the two names?

5           MR. SHAPIRO: Danna D-a-n-n-a and Foster.

6           And in condemnation actions, there's a two-step  
7 process. They can argue whether it was legitimate and  
8 they can argue the value. And neither argued legitimacy  
9 issue. They just argued the value we were offering. And  
10 so we're going to have a jury decide.

11          PRESIDENT CARTER: What's the pleasure of the  
12 Board at this point?

13          We'll entertain a motion.

14          VICE PRESIDENT HODGKINS: I would move approval  
15 of the item.

16          PRESIDENT CARTER: Okay. We have a motion to  
17 approve, that the agreement between the Three Rivers Levee  
18 Improvement Authority and the U.S. Fish and Wildlife  
19 Service meets the flood conveyance maintenance requirement  
20 of Special Condition 14.

21          Is there a second?

22          SECRETARY DOHERTY: I'll second it.

23          PRESIDENT CARTER: We have a second.

24          Any discussion?

25          Okay.

1 BOARD MEMBER RIE: I have a question.

2 PRESIDENT CARTER: Yes.

3 BOARD MEMBER RIE: So we're just making a finding  
4 that they have met Condition 14, correct? We're not  
5 modifying anybody's permits. We're just making a finding.

6 STAFF COUNSEL MORGAN: (Nods head.)

7 PRESIDENT CARTER: Correct.

8 BOARD MEMBER RIE: Okay.

9 PRESIDENT CARTER: Okay. General Manager Punia,  
10 would you call the roll please.

11 GENERAL MANAGER PUNIA: Board Member RoseMarie  
12 Burroughs?

13 BOARD MEMBER BURROUGHS: I abstain.

14 GENERAL MANAGER PUNIA: Board Member Lady Bug  
15 Doherty?

16 SECRETARY DOHERTY: Yes.

17 GENERAL MANAGER PUNIA: Board member Teri Rie?

18 BOARD MEMBER RIE: Yes.

19 GENERAL MANAGER PUNIA: Vice President Butch  
20 Hodgkins?

21 VICE PRESIDENT HODGKINS: Yes.

22 GENERAL MANAGER PUNIA: President Ben Carter?

23 PRESIDENT CARTER: Yes.

24 So the motion carries. Four ayes and one  
25 abstention.

1 MR. SHAPIRO: Thank you very much.

2 PRESIDENT CARTER: Now, we are on to Item 14B, is  
3 Permit No. 18095-GM, Three River Levee Improvement  
4 Authority, Yuba River, Yuba County.

5 To consider a request to approve a variance to  
6 Special Condition 15 to allow the levee crown elevation to  
7 be increased in height above the Corps of Engineers'  
8 project design elevation.

9 Mr. Bradley.

10 CHIEF ENGINEER BRADLEY: Yes. There is no staff  
11 recommendation or staff report on this item, partly due to  
12 when the request was made, in combination with the lawsuit  
13 that was before the Board, which took a substantial amount  
14 of staff time to respond to. And the Attorney General  
15 actually directed us to work on that at the expense of  
16 everything else because of the timelines involved.

17 STAFF COUNSEL MORGAN: For the record, it was the  
18 deputy attorney general.

19 (Laughter.)

20 CHIEF ENGINEER BRADLEY: I'll accept that  
21 correction.

22 (Laughter.)

23 PRESIDENT CARTER: Okay. So there's no staff  
24 recommendation.

25 CHIEF ENGINEER BRADLEY: I did provide a



1 recommendation to the applicant, as required by the  
2 Board's regs, which means seven days before they need to  
3 know what a recommendation is.

4           My recommendation at that time was that the Board  
5 remove this item or not hear this item. But if they were  
6 to hear it, that the recommendation would be for denial.  
7 The issue of raising levees above the existing adopted  
8 plan of flood control is an extremely large and, maybe I  
9 should say, even undecided issue as to what that is.

10           We do have an adopted plan of flood control.  
11 Once you get into changing that, I'm not sure what the  
12 consequences are. I'm not even sure how to directly  
13 evaluate the impacts at the moment or what impacts I  
14 should evaluate. Evaluate the impacts only on the design  
15 flood? I don't believe that's the case. Otherwise  
16 there's a lot of places where the levees would have been  
17 raised in the past, that have not been raised in the past.

18           So the Board is not charged with just the design  
19 flood as the Corps is. It is charged with making sure  
20 that one person raising levees does not impact somebody  
21 else. Part of the reason for the Board being in place is  
22 to address those impacts.

23           My uncertainty is, how do I evaluate those  
24 impacts? And we did have a meeting with a consultant  
25 about ten days ago -- actually on October 11th, to discuss

1 a couple of ways of doing this technically, but not  
2 exactly what the impacts would be, and maybe even what  
3 should be evaluated, only some ways of doing this.

4 I know that the applicant wants to make a plea.  
5 And I think they should be heard, since you have not  
6 removed this from the item. In fact, they will be heard.  
7 But my concern is is that we really don't know what the  
8 impacts are. I mean just thinking about it, if you allow  
9 a levee to be raised upstream, that means more flow can be  
10 passed at some point to downstream areas that may not be  
11 able to handle that flow.

12 Now, what the consequences of those impacts are,  
13 whether they're significant or not, may be the question  
14 that really has to be answered. I cannot answer that at  
15 this time.

16 BOARD MEMBER BURROUGHS: In lieu of the fact that  
17 our staff has not had a chance to give staff opinion on  
18 this, I would like to table this till next month.

19 PRESIDENT CARTER: Okay.

20 BOARD MEMBER BURROUGHS: I move to table this  
21 till next month.

22 PRESIDENT CARTER: Okay. We have a motion to  
23 table.

24 Is there a second?

25 PRESIDENT CARTER: Okay. We will continue the

1 discussion.

2 Do you have anything else, Mr. Bradley?

3 CHIEF ENGINEER BRADLEY: Not at this time.

4 PRESIDENT CARTER: Okay. Does the applicant wish  
5 to address the Board?

6 MR. REINHARDT: Members of the Board. I am Ric  
7 Reinhardt. I'm with MBK Engineers. I'm the Three Rivers  
8 Program Manager.

9 Given how late it is in the day, I'd like to try  
10 to be as brief as possible.

11 I'd like to start by saying that my goal today  
12 would be to demonstrate to the Board that there is  
13 validity in pursuing this.

14 I can't get the PowerPoint to come up.

15 And that I would ask that the Board consider  
16 approval of this item subject to the General Manager's  
17 review and approval of the hydraulic impact analysis.

18 That's what I would hope we could accomplish  
19 today.

20 BOARD MEMBER BURROUGHS: Excuse me. Before you  
21 begin, was this packet of information available in our  
22 Board packet or just what we received today?

23 MR. REINHARDT: The hydraulic impact analysis you  
24 have was provided to staff -- the first version I believe  
25 was late September. Since staff did not provide you a

1 Board package, I would assume that you did not get it.  
2 But that hydraulic impact analysis was provided to staff  
3 in late September.

4 (Thereupon an overhead presentation was  
5 Presented as follows.)

6 MR. REINHARDT: The proposal before the Board is  
7 to raise the south Yuba River levee an average of .2 feet,  
8 just a little over 2 inches above the Sacramento River  
9 Flood Control Project design floodplain from Highway 70 to  
10 Union Pacific upstream of Simpson Lane. This mistake.

11 This action is not necessary for FEMA  
12 certification. And the importance of this is if the Board  
13 denies this, we can proceed and we can certify the south  
14 Yuba County area meeting FEMA's minimum standard, but we  
15 will not achieve the 200-year standard that your Board and  
16 the Three Rivers Board has targeted as an objective for  
17 this project.

18 The decision is time critical. We have this  
19 levee degraded right now for construction of the slurry  
20 wall. And we're going to start restoration of that levee  
21 next week. If we restore it to the Sacramento River Flood  
22 Control Project elevation, it's very unlikely that we'll  
23 come back because of the cost of doing so. Once we  
24 restore that levee and we put the gravel on top of the  
25 road and we demobilize, it would be very expensive to come

1 back, take the gravel off, raise it 2/10 of a foot, put  
2 the gravel back on.

3 Very likely we would be put in a position of  
4 having to live with less than 200-year protection along  
5 the Yuba River levee.

6 It is Three Rivers' opinion that the Reclamation  
7 Board as part of 17782 already made the decision in the  
8 subcommittee meetings in which members of the previous  
9 Reclamation Board and staff sat through. The subcommittee  
10 required us to develop a plan to provide 200-year  
11 protection. That was one of the stated goals. The other  
12 stated goal was to do it in a way that did not transfer  
13 impact to the surrounding property owners. That's why we  
14 included the Bear River setback levee.

15 As part of 17782, the Board authorized raising  
16 the Bear River and the Western Pacific Interceptor Canal  
17 above the Sacramento River Flood Control Project, I want  
18 to say by an average of about a foot to a foot and a half.  
19 That construction has occurred and is complete.

20 --o0o--

21 MR. REINHARDT: This is a profile of the top of  
22 the Yuba River levee and the 1957 design profile on the  
23 dash line. The solid line is the 200-year water surface.  
24 The line that's just come on the screen is what 1957  
25 design elevation top of levee is, and then our proposal.

1 So there's a very slight increase in levee height. Less  
2 than three inches on average through the reach.

3 --o0o--

4 MR. REINHARDT: In cross-section, this is the  
5 1957 top of levee. This is our proposal.

6 And just to give you some context over the levees  
7 in the area, the levee directly across from RD 784, the  
8 Marysville levee, is a little over three feet higher than  
9 the Yuba River levee, RD 784.

10 --o0o--

11 MR. REINHARDT: Our hydraulic impact analysis.  
12 It's the same methodology that we're using for SAFCA for a  
13 permit that will be before you next month to raise levees  
14 at Natomas. It's the same methodology that we used for  
15 Permit 17782 to raise the Western Pacific Interceptor  
16 Canal and Bear River levees. And it's the same  
17 methodology that we used for the diurnal analysis for the  
18 River Islands project.

19 We analyze the 50, the 100, and the 200-year  
20 events to see if those flood events would overtop the  
21 levee. The 1957 design profile -- or design flood is  
22 between the 100 and 200-year event.

23 The results: The Yuba River south levee does not  
24 overtop under any of these conditions under the existing  
25 top of levee.

1           And so therefore there is 0.00 flood downstream  
2 impacts.

3                               --o0o--

4           MR. REINHARDT: Congress authorized the Yuba  
5 Basin Project for construction in the Water Resource  
6 Development Act of 1999. The feasibility study had a  
7 stated objective of providing 200-year protection to RD  
8 784. Raising of the RD 784 Yuba River levee was included  
9 in the authorized project. The state authorization for  
10 that was contained in AB 1147.

11                              --o0o--

12           MR. REINHARDT: I heard Mr. Bradley state earlier  
13 that the design of Sacramento River Flood Control Project  
14 was maybe being interpreted as a maximum standard. I  
15 think the California Code of Regulations is very clear.  
16 Title 23 states that it is a minimum standard. If I may  
17 quote from Section 120, it says, "All levees constructed  
18 or reconstructed must have a minimum of three foot of  
19 freeboard above the design floodplain."

20           Section G states, "If a proposed project which  
21 includes levee improvements would result in substantial  
22 residential development within an area without levee  
23 improvements, it would be subject to the FEMA regulatory  
24 100-year floodplain constraints. The Board may require  
25 the permittee to mitigate for any increase average annual

1 flood damage by increasing the level of protection  
2 provided by the levee improvement project up to and  
3 including the standard project flood." The standard  
4 project flood is much higher than the 1957 design of the  
5 project.

6 I think the Code of Regulations is very clear  
7 that the Sacramento River Flood Control Project design is  
8 a minimum standard.

9 Right now the Reclamation Board I think has a  
10 pretty clear adopted policy of how to deal with levee  
11 raising. For Yuba County, for the Bear River and Western  
12 Pacific Interceptor Canal you required us to demonstrate  
13 that there was no downstream impacts.

14 You've also approved levee raising for Sacramento  
15 on the American River, Arcade Creek, Dry Creek, South  
16 Roble, and Natomas East Main Drainage Canal. The project  
17 that you heard earlier today -- and I think it was Item  
18 10A -- was the proposal to raise the Mayhew levee to  
19 protect a portion of Sacramento.

20 Does SJAFCA Project require levee raising above  
21 the Sacramento River Flood Control Project design? As did  
22 the RD 17 project on the San Joaquin River.

23 The West Sacramento project was another project  
24 in which the Reclamation Board sponsored raising of the  
25 levees to protect the City of West Sacramento above the



1 Sacramento River Flood Control Project design.

2 --oOo--

3 MR. REINHARDT: In summary, raising this levee by  
4 just under three inches is necessary to provide 200-year  
5 protection to the area. There is no hydraulic impact to  
6 the design of the Sacramento River Flood Control Project.  
7 It's authorized by Congress and the State Legislature.  
8 And it's consistent with the Reclamation Board's stated  
9 goal of providing 200-year protection to urban areas.

10 Right now construction is underway. So if the  
11 Board tables this discussion or denies it, we will proceed  
12 with restoring to the Sacramento River Flood Control  
13 Project design and we'll provide less than 200-year  
14 protection to this area.

15 That concludes my presentation.

16 PRESIDENT CARTER: Any questions for Mr.  
17 Reinhardt?

18 SECRETARY DOHERTY: Yes.

19 You go ahead first.

20 VICE PRESIDENT HODGKINS: Ric, could we go back  
21 to the profile that showed the '57 design and the 200  
22 year.

23 How much difference is there between the two  
24 lines?

25 MR. REINHARDT: Between the 1957 water surface

1 and the 200-year water surface or the top of levee?

2 VICE PRESIDENT HODGKINS: No, the '57 design and  
3 the 200 year.

4 MR. REINHARDT: It's a little less than a foot.  
5 It looks like about 7/10 of a foot.

6 VICE PRESIDENT HODGKINS: Really.

7 So there's 7/10 of a foot to get from the '57  
8 profile up to 200 year?

9 MR. REINHARDT: Seven-tenths of a foot between  
10 the 1957 design elevation and the 200 year, yes.

11 VICE PRESIDENT HODGKINS: Okay. Thanks, Ric.

12 PRESIDENT CARTER: Any other questions?

13 SECRETARY DOHERTY: Yes. I just want to make  
14 sure I understand.

15 Now, on the Marysville side, it is at 84.2; is  
16 that correct?

17 MR. REINHARDT: Yes, the Marysville top of levee  
18 at this cross-section. The Marysville levee, the entire  
19 reach is significantly higher than the Yuba side. At this  
20 cross-section the Marysville top of levee's 84.2 and the  
21 existing Yuba River levee is 80.59.

22 SECRETARY DOHERTY: So if you should raise the  
23 Yuba side, or the Lindhurst or whatever you're going to  
24 call it, up to the same level, is that going to cause any  
25 impact downstream?

1           MR. REINHARDT: We are not proposing to raise it  
2 up to the same level. We are proposing to raise it to  
3 elevation essentially 81.0. And it says on the slide  
4 80.97. So we will still be 3.2 feet lower than the  
5 Marysville levee. And our relative impact analysis says  
6 raising it by a little less than three inches has zero  
7 hydraulic impact. And what I would like the Board to  
8 consider, as I started my presentation, is to delegate  
9 concurrence of that to the General Manager if he finds  
10 that our hydraulic impact analysis is adequate and  
11 confirms that there is 0.00 impact.

12           BOARD MEMBER BURROUGHS: Mr. President?

13           PRESIDENT CARTER: Yes.

14           BOARD MEMBER BURROUGHS: If I may ask a question.

15           As we're discussing raising the levee, I'd like  
16 to get legal counsel's opinion on this topic.

17           STAFF COUNSEL MORGAN: Okay. Do you want me to  
18 do that now, or are there any more questions of Mr.  
19 Reinhardt before I do that?

20           VICE PRESIDENT HODGKINS: Well, just one other  
21 point to confuse us all. Go back to the profile.

22           Where the profile is already above the '57  
23 design, you're of course going to leave it there.

24           MR. REINHARDT: The staff -- the way the Special  
25 Condition was written was that when we restored a levee,

1 that we will not put it any higher. We do not believe  
2 that we can be required to lower the levee. So it would  
3 be our intent to put it back to whatever elevation it was  
4 before. Except where it's lower than, we would restore it  
5 to the '57 profile.

6 VICE PRESIDENT HODGKINS: Okay. Go ahead.

7 Thank you.

8 BOARD MEMBER RIE: So you want to raise the levee  
9 three inches?

10 MR. REINHARDT: That's correct.

11 BOARD MEMBER RIE: Okay. Is your hydraulic model  
12 really that accurate to, you know, three inches?

13 MR. REINHARDT: I think it would be very  
14 difficult to have any hydraulic impact analysis show an  
15 impact at a raise that small. That intuitively to me,  
16 it's not something -- the impact of raising a levee three  
17 inches is not something that can be measured, unless it's  
18 below the '57 profile, below the design flow of the  
19 system, but it overtops under existing conditions, like  
20 some of the levees in the Yolo Bypass down at Edberg Tract  
21 and and others.

22 PRESIDENT CARTER: I guess a question --  
23 corollary to that is: Mr. Bradley, in concept do you  
24 agree with that?

25 CHIEF ENGINEER BRADLEY: What was the question?

1 Could you phrase that again?

2 BOARD MEMBER RIE: The question was: Are our  
3 hydraulic models really that accurate, to the inch?

4 PRESIDENT CARTER: Or to three inches.

5 CHIEF ENGINEER BRADLEY: No, not in my opinion,  
6 not a natural physical condition. You're going out and  
7 measuring stuff within plus or minus probably half a foot  
8 in various areas. The error analysis overall probably  
9 doesn't lend you that level of accuracy.

10 A lot of those fall out though when you're doing  
11 comparisons. You run one study and you compare it to  
12 another study using the same types of cross-sections. The  
13 errors and the measurement of the cross-sections and so  
14 forth start to fall out. So if you're comparing them,  
15 then you can get fairly close, in actual comparisons.

16 VICE PRESIDENT HODGKINS: Steve, could I state  
17 that again and see if I say it correctly.

18 When you want to use a model to predict where the  
19 water surface is going to be where you don't really know,  
20 half a foot is good work. But when you know the  
21 conditions you're modeling, and you model the differences  
22 in how those conditions are, we all think that the model  
23 does a good job of telling us what the differences would  
24 be if the channel were modified in those ways. So but  
25 then, stated another way for hydraulic impacts, probably

1 modeling is a pretty good indicator of whether there's any  
2 real change as a result of the modifications in the  
3 project. But don't believe them when it comes to how high  
4 the water's actually going to get.

5 CHIEF ENGINEER BRADLEY: Yeah, I have several  
6 comments on what Rick has said.

7 We did receive a hydraulic analysis, the one that  
8 just showed the Yuba. I sent back an e-mail saying that  
9 was inadequate for my purposes to determine impacts.

10 Whatever comes out of the Yuba ends up in the  
11 Feather, which ends up in the Sacramento. So the impacts  
12 go far beyond the Yuba by improving the flow capacity in  
13 the Yuba.

14 Also, I do not believe -- and my own opinion --  
15 that just looking at a change in the water surface profile  
16 is adequate to determine the overall impacts of raising  
17 levees and increasing capacity -- flow capacity in  
18 downstream channel.

19 You know, in truth, I'm not really prepared to  
20 discuss all these issues because I didn't have a chance to  
21 look at everything.

22 You know, just because they assume failure only  
23 at the top of the levee, that may or may not be the  
24 correct way to do it. You know, maybe if we failed at the  
25 design, floodplain elevation and see what those impacts

1 are.

2           Also, the section of the water -- of the  
3 regulations that Ric stated only apply to areas that are  
4 currently mapped as FEMA flood areas. This area is not  
5 mapped as a FEMA flood area. That is the reason that  
6 River Islands -- we could ask a higher level of protection  
7 for River Islands if we choose, because it is now mapped  
8 as FEMA flood area. This area is not. And so that's the  
9 difference on those.

10           Certification. Ric is correct. They will be  
11 able to achieve their 100-year certification for the  
12 levee. They will actually be able to pass the 200-year  
13 flow in the stretch of levee. They will not be able to  
14 pass the 200-year flow with three feet of freeboard. To  
15 my knowledge, there is no standard requiring three feet of  
16 freeboard for a 200-year flood. The three feet of  
17 freeboard comes out of the FEMA certification for only a  
18 100-year. Everybody's kind of transferred that to the  
19 200-year. Makes a lot of sense to me. But there is no  
20 standard for that. So they will still be able to pass or  
21 convey a 200-year flood, but not without the three feet of  
22 freeboard. They'll have 2.7 feet of freeboard or whatever  
23 it works out to be on the average.

24           By the way, the three inches is only average over  
25 the length of the thing. As you can see, there were some

1 areas that were probably 7/10 or a foot and there's a  
2 significant rise at the area where it joins the Feather  
3 River.

4 Ric mentioned several projects where levee raises  
5 had occurred. That is correct. Those are federal  
6 projects, constructed by the federal government, in  
7 cooperation with the Reclamation Board.

8 This is an authorized federal project. It is not  
9 being constructed by the federal government or the  
10 Reclamation Board. That is the reason it is under permit.  
11 If it was a Federal project, you would be hearing this  
12 from the -- as a project, approval of the EIR, acceptance  
13 of all the project stuff. This is not a federal project  
14 at the moment. It is an authorized federal project, but  
15 it's not being constructed as a federal project.

16 So that is the difference. The only one that he  
17 mentioned that got constructed as a non-federal project  
18 under a permit was SJAFCA. They basically went through an  
19 alternative process of getting authorized by the State  
20 Legislature and Congress. They went around the Rec Board  
21 at that time after the 1997 flood and got their  
22 authorizations directly from Congress and the State  
23 Legislature, as well as their appropriations.

24 And it's a problem we are having with that  
25 project now, in that we cannot accept the improvements



1 because we have no authorization to accept the project.

2 It wasn't an authorized project for the Reclamation Board.

3 So that was an ongoing issue with SJAFCA at the  
4 moment. We want to accept it. We just have no authority  
5 to accept it.

6 I thought I had more. But that was all the  
7 issues that I had written down at this time.

8 I do think if you were starting to raise the  
9 levees above the adopted plan of flood control, there is  
10 some concern. Now, you can take a chance. Like I said,  
11 they can still convey 200-year with almost three feet of  
12 freeboard, not quite. And if you do allow them to raise  
13 it, there's a chance that nothing will ever happen before  
14 you get an authorized project. But if it does, I think  
15 the state will be at some risk.

16 PRESIDENT CARTER: Okay. Thank you.

17 We have a couple public comments.

18 Scott, do you want to throw in your two cents?

19 STAFF COUNSEL MORGAN: Sure.

20 I think the problem here is it's an issue of  
21 legal principles. The absolute values are less important,  
22 you know, whether it's three inches, three feet or  
23 whatever, because I can predict -- and I've warned some of  
24 our engineers who deal with floodplain issues, when they  
25 say at such and such a point there is no longer an impact,

1 that -- from a legal perspective, if you want to know  
2 where that point is, find a point where you can't find a  
3 registered engineer in the State of California who would  
4 be willing to testify under oath for the plaintiffs  
5 because there was an impact, because everywhere else  
6 they're going to find an impact and they will testify on  
7 behalf of the people who have been flooded.

8           That's perhaps a difficult standard to match --  
9 or to meet.

10           But Congress and the State Legislature can  
11 authorize projects that exceed the current design  
12 capacity. This Board can approve projects that exceed the  
13 design capacity. What we don't exactly know is what will  
14 happen if people make a showing that those improvements or  
15 those increases to the design capacity contributed to some  
16 economic loss, an invasion of their property by flood  
17 waters, the takings of their property. We are currently  
18 working on an issue, internal, trying to come up with the  
19 best legal guidance we can for this Board, for the  
20 Department, for the Governor's office. And I presume the  
21 Legislature's working in parallel on the same issue  
22 because there's a lot of desire to see urban areas receive  
23 200-year protection.

24           Historically this Board as long back as -- I have  
25 talked to former Board counsel have described the desire

1 by the Board to see increased level of protection for  
2 urban areas, which has led over the years to sort of a de  
3 facto difference in levee standards for urban areas versus  
4 rural areas. And it almost got to the point that people  
5 believed -- and I know in my legal office, the legal  
6 office did believe that there was a dual tract standard.  
7 The engineers informed us that, no, in fact there is no  
8 dual tract standard. There's just been a practice of  
9 inevitably and predictably providing greater and greater  
10 level of protections for the more heavily urbanized areas.  
11 They're at greater risk for loss and property values where  
12 the property is developed, versus rural areas which absorb  
13 the floods more readily.

14 But because they have the power and you have the  
15 power to make those calls doesn't mean that it's a change  
16 in the plan of flood control that comes at no cost. And  
17 if indeed these changes in the plan of flood control  
18 direct flows, greater amounts of flows, greater  
19 frequencies of flows to other properties, again then you  
20 have the issue that you are potentially affecting the  
21 taking of that property.

22 Now, there's a whole spectrum of opinion running  
23 from arguments that say, "Absolutely not. It doesn't make  
24 any difference" to people who say that all kinds of  
25 improvements to the levees that increase the risk of

1 flooding downstream are constituted takings. So you can  
2 have any opinion along that spectrum you like.

3 We don't yet internally have a particular opinion  
4 to give you. I can give you something off the cuff. But  
5 I would rather wait until we have run the course on this  
6 process to give you the best advice we can.

7 I can tell you now, I am concerned about the  
8 implications, based on the way the courts have gone in  
9 cases like Paterno or Arreola, that as the state becomes  
10 increasingly urbanized, the courts have -- there is a  
11 trend you can see that the courts are less and less  
12 tolerant of development in one area imposing burdens on  
13 another area. And they're requiring the governmental  
14 agencies that approve those to pay for the takings cost  
15 associated with them. So there's a potential for a cost.

16 Now, are own regulations address this under  
17 Permit Conditions 0: "The permit may require the  
18 permittee to mitigate for hydraulic impacts of the  
19 permitted works by reducing or eliminating the additional  
20 flood risks that third parties created by the permitted  
21 work."

22 Another way to mitigate is by compensating  
23 people, if you have inverse condem -- if you have eminent  
24 domain powers, you simply condemn the property that you're  
25 taking by flowage easements or whatever is required. Or

1 as it's suggested here, mitigate through some sort of  
2 engineering solution.

3           So, these are, you know, legitimate policy calls  
4 for the Board, they're legitimate policy calls for the  
5 Legislature, for Congress. At this point I can't give you  
6 particularly specific items. We don't know, because we  
7 don't have a staff report, if the Board staff agrees that  
8 the analysis correctly shows no impacts or if their  
9 analysis is an adequate analysis, if it, you know, covers  
10 the range of options and events that the Board staff would  
11 feel were necessary to show whether impacts were  
12 occurring.

13           And even at that point then we still have to go  
14 through the process of determining what we believe the law  
15 of inverse condemnation in a case like this -- or eminent  
16 domain in a case like this would do. And we're not there  
17 yet, but there are serious concerns that we have.

18           CHIEF ENGINEER BRADLEY: Mr. Reinhardt had a few  
19 comments on Scott's thing. And then I wanted to correct  
20 something I had stated earlier.

21           PRESIDENT CARTER: Okay. We want to keep it  
22 very, very brief. We have a couple people from the public  
23 that would like to address this issue and we need to move  
24 on. It's getting very late.

25           MR. REINHARDT: Absolutely. Thank you, Mr.

1 President.

2 Ric Reinhardt, MBK. Just real quickly.

3 Mr. Morgan has laid out the potential liability  
4 associated with the downstream taking as a result of your  
5 approval of this action. But I wanted to remind the Board  
6 that the State of California has already paid out in  
7 excess of \$500 million because we did not provide an  
8 adequate level of protection. So what you're balancing is  
9 your Paterno liability. It puts another failure in this  
10 area. And now there's not \$500 million worth of damages;  
11 there's billions of dollars worth of damages. And  
12 you're -- what you're weighing today is the decrease of  
13 the likelihood that you're going to experience another  
14 failure in RD 784, and the State of California will now be  
15 responsible for a payout of billions of dollars versus the  
16 likelihood that this action, raising the levee by three  
17 inches, will -- someone can prove that that levee cause  
18 damage downstream and economic downstream. And I think  
19 they're far more than an order of magnitudes off. We're  
20 not talking about billions of dollars in downstream  
21 damages as a result of raising the levee three inches.  
22 And I would hope Mr. Morgan would agree with me on that.

23 STAFF COUNSEL MORGAN: Well, you can hope.

24 (Laughter.)

25 STAFF COUNSEL MORGAN: No, unfortunately those

1 are apples and oranges. The Paterno liability grew out of  
2 the failure of the system below the design flow.

3 And so that we are potentially liable under  
4 Paterno facts for anything up to the design flow. Once it  
5 gets to design flow and beyond, we should theoretically  
6 have no liability. However, I don't want to speculate  
7 about what the next case is going to do.

8 But the law today is that if it exceeds the  
9 design flow and the thing overtops or fails, we should not  
10 be liable for something beyond what we designed to protect  
11 people against.

12 What this will do is protect people against more.  
13 So we'll have to hold more and more flow before the thing  
14 can fail or overtop. And if it does, then we'll be  
15 liable. So we're actually increasing Paterno liability.

16 CHIEF ENGINEER BRADLEY: I would agree with  
17 Scott. You're able --

18 PRESIDENT CARTER: Mr. Bradley, please be brief,  
19 please be concise.

20 CHIEF ENGINEER BRADLEY: What you're going -- if  
21 you should approve this levee raise, then you are  
22 knowingly approving a project that will convey more flow.  
23 And as you can see, the flow is being increased by, oh,  
24 anywhere from about a quarter of a foot to a foot and a  
25 quarter, give or take a little bit. Depends where it is.

1           So there is more flow going down. And what  
2 you've done by allowing the raise to occur is to knowingly  
3 approve something where there is going to be more flow  
4 arriving downstream.

5           The correction I wanted to make, and it was  
6 pointed out by Mr. Reinhardt to me, is some of the  
7 projects he mentioned were done under permit: The North  
8 Area project, the Roble project, the oak tree. They are  
9 now federal projects. So they were done under permit, but  
10 became federal projects, as I expect this one eventually  
11 to be. So the Board has done these in the past. I think  
12 Paterno has changed some of our perceptions on how we like  
13 to proceed on certain things.

14           STAFF COUNSEL MORGAN: I would like to make a --  
15 not a correction but just a clarification. I think the  
16 comparison Mr. Reinhardt is seeking to make -- and that it  
17 is an appropriate and a fair one -- is the risk of  
18 economic loss from flooding in the area that's going to be  
19 protected by this levee raise is much greater than the  
20 risk of economic loss downstream from the levee raise.

21           And I think, without being an economist or having  
22 looked at any numbers that I could understand if I did,  
23 but that's probably correct. You'd have a highly  
24 developed urban area with very expensive homes behind  
25 those levees. Any decrease in risk of flooding to that



1 area is going to be very valuable.

2           The problem is not that that's not a good  
3 bargain, but that the people downstream haven't agreed to  
4 it. And we need to compensate those people. If we can  
5 identify that we can -- you know, if we believe that  
6 there's potential takings there, the people downstream  
7 haven't agreed to that, we need to compensate them if in  
8 fact we're going to invade their property.

9           PRESIDENT CARTER: Thank you.

10          Mr. Eres, please.

11          MR. ERES: Thank you, Mr. President. Tom Eres  
12 representing Hoffman Ranch. You're going to tell me, like  
13 a sergeant was told me, take 10, expect 5 and get 3. So  
14 I'm working on 3. Is that my understanding?

15          This isn't ready tonight. I know that your  
16 counsel likes to spout nice Latin phrases. This one I  
17 would say is caveat emptor. I'd be very careful on buyer  
18 beware.

19          It's not ready. It's not prudent. I've said  
20 many times this should be all looked at as a system.  
21 You're talking about tinkering and modifying a levee.  
22 Well, I don't know what the value of that is going to be.

23          What I do know is the system that we're concerned  
24 with is the Yuba River on the north, the Feather River on  
25 the west, Bear River on the south, Western Pacific

1   Interceptor on the east. That's a ring levee around a  
2   very unique set of development interesting projects.

3               I respect Mr. Reinhardt. He's a very fine  
4   engineer. But I would suggest he's an advocate. What we  
5   need here is the calm, cool and reflected opinion of your  
6   chief engineer and your legal counsel. The public needs  
7   that. The public deserves that.

8               With respect with the -- federal project, we'd be  
9   talking about 408, NEPA and CEQA. And from my standpoint,  
10  even though we may not be compelled to do so because it's  
11  not a federal project levee, there's very prudent factors  
12  that ought to be considered with respect to anything that  
13  has this kind of a potential implication. I've said many  
14  times, "It's a system, it's a system, it's a system." The  
15  idea of trying to take and plug and play based upon the  
16  opportunity of cost and revenue is not the best way to  
17  take a look at an entire system.

18              I'm very concerned with equal protection. I'm  
19  very concerned with the downstream implications. And I'm  
20  very concerned with the implications on both sides of  
21  levees. So from my standpoint -- I mentioned earlier this  
22  morning, I'm still trying to figure out FEMA -- FEMA  
23  mapping and whether or not that even applies in this area.

24              May I just conclude by saying this is a bit half  
25  baked. It's not ready to be decided. And I strongly

1 support the matter be continued until you get a staff  
2 report and a legal opinion.

3 Thank you.

4 PRESIDENT CARTER: Thank you.

5 Mr. Ghelfi.

6 MR. GHELFI: Good afternoon. Pete Ghelfi,  
7 Director of Engineering for SAFCA. I will keep it quick.

8 One thing that I think you see before you is a  
9 very confusing issue, something that results in policy if  
10 you're looking forward and trying to provide urban areas  
11 with a 200-year level of flood protection.

12 By delaying activity or not allowing folks to  
13 raise their levees where it shows no hydraulic impact,  
14 there has got to be some type of standard that you test  
15 against to show that you are not having impacts upstream  
16 or downstream. And if that test is met, it shows no  
17 impacts, why not allow an urban area to protect itself to  
18 the 200-year level if that is the policy of the state and  
19 of the community?

20 You need to figure out a way to move forward.  
21 Inaction leaves communities at risk. Give us a target to  
22 shoot for if you don't know what the target is today.

23 I'm not going to address this particular issue  
24 whether they meet the test or not. They have tried, from  
25 what I understand what they've submitted. But there are

1 going to be other communities that will be in front of you  
2 again saying, "We've analyzed our project. We are showing  
3 a raise above a '57 profile which show no impact." How  
4 far does that weight go versus you're just opposed or  
5 uncertain of what a levee raise could do to future  
6 liabilities?

7           We are engineers. We have standards. There  
8 should be a way to move this forward, and give us and the  
9 flood control community a target that we can meet and move  
10 for, at least in interim, until a new state plan of flood  
11 control is adopted.

12           Thank you.

13           PRESIDENT CARTER: Thank you.

14           I don't have any more cards.

15           I did want to make a comment that's germane to  
16 Mr. Ghelfi's comments. And, that is, that we have -- the  
17 Board has talked for the last year about levels of  
18 protection. The kind of intent of the Board, the wishes  
19 of the Board have been made known in this particular  
20 project, in the West Sac project, on SAFCA projects. This  
21 Board wants to provide an adequate level of flood  
22 protection. In this project we've talked about 200 years  
23 over ten months ago. Why this hydraulic analysis -- why  
24 we didn't know the levee needed to be raised up until this  
25 point, and now it's a time crunch, it is really the wrong

1 way to run the process. We knew about this beforehand.  
2 We should have done the hydraulic analysis, run it by  
3 staff months ago so that we wouldn't be in this  
4 predicament at this point. This happens frequently with  
5 project proponents and applicants.

6 The best message I can give you, SAFCA; you,  
7 Three Rivers and everyone else out there that wants to get  
8 an application is if you know that there's a tough issue,  
9 you need to bring it before the Board before it's time to  
10 start working with the bulldozers and the scrapers.  
11 That's too late, because we cannot turn on a dime that  
12 way.

13 So that's my words of wisdom to all of you.

14 Does the rest of the Board have any comments?  
15 Are we ready to make a decision on this?

16 BOARD MEMBER BURROUGHS: On your last comment,  
17 ditto.

18 VICE PRESIDENT HODGKINS: I'd agree with that as  
19 well. But I kind of also would ask our General Manager:  
20 Where are we in terms of developing and bringing forward  
21 to the Board and the rest of the world some sort of  
22 recommendation on how you do this until we have a new  
23 state plan of flood control?

24 GENERAL MANAGER PUNIA: We are moving ahead to  
25 address this issue. We are establishing a subcommittee

1 involving DWR and Reclamation Board staff. And we may  
2 hire a consultant to facilitate this process. And we will  
3 be bringing some staff recommendation for Board's  
4 consideration early next year. It may be too late for  
5 this project, but we are working aggressively on this  
6 issue so that we have a legal and enduring recommendation  
7 on this issue.

8           So my goal is to bring early next year to you for  
9 your consideration.

10           VICE PRESIDENT HODGKINS: Thank you.

11           PRESIDENT CARTER: What's the Board's pleasure?

12           BOARD MEMBER RIE: I have a question.

13           Has the applicant done any CEQA analysis to raise  
14 the levee three inches?

15           MR. REINHARDT: Yes, we completed CEQA analysis.

16           And just to respond, President Carter. We did  
17 submit our application with this levee raise in June. It  
18 wasn't until the permit was issued by staff in August 24th  
19 that we knew that it was going to -- that the raising  
20 component would have to come before the Board. And then  
21 it was too late to meet the September Board agenda.

22           And so we did turn this in several months ago  
23 with the same proposal that's here before you today.

24           PRESIDENT CARTER: Thank you.

25           BOARD MEMBER RIE: One more question, Mr.

1 Reinhardt.

2 Is your CEQA analysis for raising the levee three  
3 inches, is it certified, is it complete?

4 MR. REINHARDT: Yes, it is, and it has been  
5 reviewed and accepted by staff, I believe.

6 CHIEF ENGINEER BRADLEY: Yeah, CEQA is complete.  
7 They've had CEQA documents for their project for some  
8 time. And you've approved other projects all under the  
9 same CEQA.

10 BOARD MEMBER RIE: So does the CEQA analysis show  
11 that there's no impact?

12 CHIEF ENGINEER BRADLEY: That doesn't matter. If  
13 we think there's an impact, they cannot adjust it -- CEQA.  
14 It's up to us to decide whether the impacts are in the  
15 flood control system or not.

16 BOARD MEMBER RIE: Well, I was just asking the  
17 question.

18 MR. REINHARDT: The CEQA document showed no  
19 impact. And we did provide the draft CEQA document to the  
20 Reclamation Board for review. And we did not receive a  
21 comment from the Reclamation Board identifying that our  
22 analysis was not adequate.

23 BOARD MEMBER RIE: Did the CEQA document go out  
24 to public -- for public comment?

25 MR. REINHARDT: Yes, it went out.

1           BOARD MEMBER RIE: And it was determined there  
2 were no downstream impacts?

3           MR. REINHARDT: It was determined there's no  
4 downstream impacts, and we did not receive any comments  
5 that I can recall that expressed concern over the proposed  
6 levee raise.

7           BOARD MEMBER RIE: Thank you.

8           PRESIDENT CARTER: We'll entertain a motion one  
9 way or the other.

10          What's the Board's pleasure?

11          SECRETARY DOHERTY: I have one more question.

12          Apparently we've had something fall through the  
13 cracks here. Am I mistaken in assuming that? If in fact  
14 you did what you were to do and CEQA is finished and it  
15 was approved, then why -- why did we not get this  
16 information?

17          CHIEF ENGINEER BRADLEY: Approval under CEQA of  
18 impacts is not the same as looking at it from our point of  
19 view for the flood control system.

20          Scott, do you want to elaborate on that a little  
21 bit?

22          STAFF COUNSEL MORGAN: I'm not sure if that's the  
23 question. I mean that's true. If we fail to comment on a  
24 CEQA document, that precludes the Board's criticizing the  
25 CEQA document down the road. But it doesn't preclude the



1 Board from requiring any kind of hydraulic analysis that  
2 is necessary to assess the impacts on the system of flood  
3 control, because that's what you're charged with  
4 protecting.

5 One thing you can't do is say, "Your CEQA  
6 document is inadequate," however. But we don't care.  
7 We're satisfied with the CEQA document.

8 I gathered from your question though that the  
9 timing was such that if they were doing the CEQA analysis  
10 presumably some time ago, why didn't -- you know, why  
11 wasn't that presented when the first permit was requested?  
12 Or something along that line. And I don't have the answer  
13 to that.

14 CHIEF ENGINEER BRADLEY: I didn't understand her  
15 question.

16 BOARD MEMBER RIE: I'd like to make a comment.

17 The reason why I bring up the CEQA issue is CEQA  
18 includes a hydraulic analysis. And if you go through the  
19 public process and your CEQA document is certified, that's  
20 usually a good indicator that there are no downstream  
21 impacts with regard to the hydraulics and hydrology.

22 You know, we don't go through the CEQA process to  
23 come back and say, "Well, it doesn't matter, it doesn't  
24 mean anything." It does mean something. And that's why I  
25 bring it up.

1           STAFF COUNSEL MORGAN: No, I -- well, in terms of  
2 what it limits the Board on, it really limits the Board  
3 only on challenging the adequacy of CEQA. It does not  
4 limit the Board in any way in requiring any other  
5 hydraulic analysis if it determines that there's a  
6 potential problem, because the Board has a broader  
7 responsibility.

8           BOARD MEMBER RIE: Understood.

9           PRESIDENT CARTER: So what's the Board's  
10 pleasure?

11           Do I hear a motion?

12           VICE PRESIDENT HODGKINS: Someone has to move  
13 something.

14           This is a tough issue from the standpoint of --  
15 and I think the Three Rivers people need to understand  
16 that this is an issue where the Board's really challenged  
17 in terms of the need to work our way through this in a  
18 manner that the Board and staff are together, that we  
19 understand each other and we know what we're doing. And  
20 while I may have my own personal opinions here about this  
21 particular improvement and whether there's any real  
22 hydraulic impacts -- and, remember, I live downstream of  
23 this, and I don't think there are any -- but I think this  
24 is one where what the Board needs to do is continue to  
25 encourage staff -- to provide whatever help we can to get

1 you to come forward here with a policy that everybody  
2 understands, so that we can let people do an analysis in a  
3 way that is meaningful and doesn't degenerate into these  
4 kinds of things.

5           And so what I'm going to move here is that we in  
6 effect continue this item to some time in the future when  
7 we have a policy. And the pressure is really going to be  
8 on staff and DWR to develop that policy and bring it  
9 forward and get it adopted.

10           And, God, help me if this levee fails this  
11 winter, is overtopped by three inches and washes away.

12           So I move we continue this until we have a policy  
13 on this matter.

14           SECRETARY DOHERTY: Let me understand.

15           You want to continue it. Does that mean that we  
16 continue discussion or we allow them to --

17           VICE PRESIDENT HODGKINS: No. We bring it back  
18 to the Board at such time as the Board has a policy. And  
19 the applicant is going to go forward and build the project  
20 to either -- the existing levee height to the '57 profile.  
21 It's going to be three inches shorter than it would have  
22 been if we were to approve this. And let's hope that that  
23 three inches doesn't make a difference this winter.

24           BOARD MEMBER RIE: It may take us two years to  
25 develop a policy.

1           VICE PRESIDENT HODGKINS:  It cannot take us two  
2 years --

3           BOARD MEMBER RIE:  It may.

4           VICE PRESIDENT HODGKINS:  -- because somebody  
5 well get flooded in two years.  So it cannot take us two  
6 years.  It has to be done much more quickly than that.

7           PRESIDENT CARTER:  So there's a motion to  
8 continue this item to a future meeting.

9           Is there a second?

10          SECRETARY DOHERTY:  Butch, I'll put my neck on  
11 the line with yours.

12          PRESIDENT CARTER:  I take that's a second.

13          SECRETARY DOHERTY:  Yes.

14          PRESIDENT CARTER:  All right.  Very good.  
15 Any discussion?

16          BOARD MEMBER RIE:  Yes.

17          I don't think it's fair to the applicant to  
18 require them to wait until this Board has a policy.  They  
19 need to either have an approval or a denial.

20          And I think what's at issue here is our staff has  
21 not had time to review the information.  So I would think  
22 that you would want to hear this again after staff has a  
23 chance to review the application.  And, you know, maybe  
24 the staff will concur with the applicant that there are no  
25 impacts, and maybe that's a very quick review for our

1 staff. But I think in fairness to the applicant, we need  
2 to give them that opportunity.

3 SECRETARY DOHERTY: The problem I think is that  
4 they are working there now. They're going to complete  
5 this project. They're not going to put this raise in.  
6 They're not going to come back and put it in later.

7 And this is probably a tough one.

8 PRESIDENT CARTER: Well, I think the difference  
9 between the motion that we have before us and what Teri's  
10 proposing is basically not waiting for the Board to  
11 develop a policy; instead, just waiting for the staff to  
12 be able to provide a staff report to the Board to assess  
13 the hydraulic impacts and the legal impacts implications  
14 of the thing. Is that correct?

15 BOARD MEMBER RIE: Yeah. I think that perhaps  
16 staff may -- after having the opportunity to review the  
17 information provided by MBK, they may concur that there is  
18 0.00 percent impact, as stated in their study.

19 PRESIDENT CARTER: Well, that's irrespective if  
20 Three Rivers is going to continue their work and if the  
21 decision is rendered in time for them to effect a levee  
22 raise. Should it be improved, they could do that. If  
23 it's not, then they can do it at a later date if they so  
24 choose.

25 SECRETARY DOHERTY: We've got a motion on the

1 floor and --

2 PRESIDENT CARTER: Right. This is the  
3 discussion.

4 SECRETARY DOHERTY: So we could defeat it.

5 PRESIDENT CARTER: So that's difference between  
6 the perspective.

7 RoseMarie.

8 BOARD MEMBER BURROUGHS: As part of the  
9 discussion, I would like to get legal counsel again to  
10 give a comment about whether it's better for us to wait  
11 for staff to make a recommendation or is the best  
12 interests of voting on this issue now?

13 STAFF COUNSEL MORGAN: Well, as I indicated at  
14 the outset, there is no staff recommendation. There is no  
15 legal recommendation I can give based on a staff  
16 recommendation.

17 And I don't recommend the Board take action on  
18 items where the staff and legal counsel can't advise the  
19 Board.

20 PRESIDENT CARTER: So the motion before us at  
21 this point is to continue the item until the Board has  
22 formulated a policy with regard to the issue of levee  
23 raises and flood protection standards.

24 Any more discussion about that?

25 SECRETARY DOHERTY: Yes, I have a question. I

1 want to make sure I understand.

2 We -- that was the motion. And the discussion  
3 that followed was, if I understand correctly, could it be  
4 possible that after staff had had time to review this,  
5 that they could give an answer to proceed?

6 PRESIDENT CARTER: No.

7 SECRETARY DOHERTY: No. Oh.

8 Well, I have staff and Teri.

9 Is that what you --

10 BOARD MEMBER RIE: My concern is, our staff may  
11 concur with the applicant and that may happen in two  
12 weeks. And if that happens, we're essentially denying the  
13 applicant's permit by postponing the decision for some  
14 unknown amount of months until we develop a policy. And I  
15 don't think that's fair.

16 PRESIDENT CARTER: So any more discussion on this  
17 motion?

18 Does everybody understand what the motion is? To  
19 continue till the Board has a policy.

20 All right. Mr. Punia, would you call the roll  
21 please.

22 GENERAL MANAGER PUNIA: Board Member RoseMarie  
23 Burroughs?

24 BOARD MEMBER BURROUGHS: I'm going to abstain  
25 right now.

1           GENERAL MANAGER PUNIA: Board Member Lady Bug  
2 Doherty?

3           SECRETARY DOHERTY: No.

4           GENERAL MANAGER PUNIA: Board Member Teri Rie?

5           BOARD MEMBER RIE: No.

6           GENERAL MANAGER PUNIA: Vice President Butch  
7 Hodgkins?

8           VICE PRESIDENT HODGKINS: Yes.

9           GENERAL MANAGER PUNIA: President Ben Carter?

10          PRESIDENT CARTER: No.

11          So the motion fails: 3 noes, 1 aye, 1  
12 abstention.

13          Somebody else have a proposal on how to get us  
14 off the top of dead center?

15          BOARD MEMBER RIE: I move we continue this item  
16 until our staff has an opportunity to review the hydraulic  
17 reports.

18          BOARD MEMBER BURROUGHS: I second that.

19          PRESIDENT CARTER: Does that -- just as a  
20 clarification. Does that mean that then, should the staff  
21 conduct their analysis and be able to supply a staff  
22 report by next Board meeting, it would come back before  
23 the Board?

24          BOARD MEMBER RIE: I would say whenever the staff  
25 is ready to bring it back before the Board is when we hear



1 it.

2 PRESIDENT CARTER: Okay.

3 BOARD MEMBER BURROUGHS: I seconded that.

4 PRESIDENT CARTER: We have a second.

5 Does everybody understand the motion?

6 SECRETARY DOHERTY: No. I thought it was going  
7 to be something different.

8 BOARD MEMBER RIE: I'm moving to continue the  
9 item until --

10 PRESIDENT CARTER: -- until the Board meets next  
11 or until the staff is ready.

12 BOARD MEMBER RIE: -- until staff is ready.

13 SECRETARY DOHERTY: So what you're saying --  
14 until staff is ready. So if the staff got ready day after  
15 tomorrow, then they could give direction to them?

16 BOARD MEMBER BURROUGHS: No.

17 BOARD MEMBER RIE: Okay. Let me rephrase the  
18 motion.

19 I move that we continue the item until we have a  
20 staff report prepared by staff.

21 PRESIDENT CARTER: But then in which case the  
22 item would come back before the Board at a meeting?

23 BOARD MEMBER RIE: Yes.

24 PRESIDENT CARTER: Very good.

25 Is that -- does everybody understand the motion?

1 BOARD MEMBER RIE: Do you still want a second?  
2 BOARD MEMBER BURROUGHS: Yes --  
3 MR. REINHARDT: Mr. Carter, can I --  
4 PRESIDENT CARTER: No.  
5 Okay. Mr. Punia, would you call the roll.  
6 GENERAL MANAGER PUNIA: Board Member RoseMarie  
7 Burroughs?  
8 BOARD MEMBER BURROUGHS: Aye.  
9 GENERAL MANAGER PUNIA: Board Member Lady Bug  
10 Doherty?  
11 SECRETARY DOHERTY: I will abstain.  
12 GENERAL MANAGER PUNIA: Board Member Teri Rie?  
13 BOARD MEMBER RIE: Yes.  
14 GENERAL MANAGER PUNIA: Vice President Butch  
15 Hodgkins?  
16 VICE PRESIDENT HODGKINS: Yes.  
17 GENERAL MANAGER PUNIA: President Ben Carter?  
18 PRESIDENT CARTER: Yes.  
19 The motion carries, 4 ayes and 1 abstention.  
20  
21 BOARD MEMBER BURROUGHS: Mr. President?  
22 PRESIDENT CARTER: Another item on this?  
23 BOARD MEMBER BURROUGHS: Yes.  
24 PRESIDENT CARTER: Okay.  
25 BOARD MEMBER BURROUGHS: I am extremely

1 uncomfortable with what is happening. And it puts the  
2 staff in a very difficult situation, it puts the Board and  
3 everyone connected with this, including our decision to  
4 make public safety decisions.

5 I think it's imperative that we have a formal  
6 request to add additional staff to get the job done in a  
7 timely manner. And whether it's to the Governor himself  
8 and everyone else that's connected with it, I think we  
9 cannot continue business as we have been doing. And I  
10 know that there has been some discussions. But at this  
11 point in time it is imperative that we get the job done.

12 PRESIDENT CARTER: Okay. I think Mr. Punia's  
13 going to be able to shed some light on that particular  
14 question under Item 18 in his report of the activities of  
15 General Manager.

16 So now -- Mr. Bradley, did you have something  
17 else?

18 CHIEF ENGINEER BRADLEY: No. I did want to say  
19 this is far reaching, these impacts. It will affect other  
20 applicants, as you heard from SAFCA.

21 If Proposition or the Bond Bill 1E passes -- Prop  
22 1E, DWR will have about \$4 billion to spend. They are  
23 going to be wanting to raise levees, improve levees, set  
24 them back. Whatever decision we make will probably affect  
25 that.

1           What is really needed here is a new plan of flood  
2 control that outlines what kind of protection urban areas  
3 should get, and analyze those consequences in total as an  
4 entire plan of flood control.

5           PRESIDENT CARTER: And in the meantime staff is  
6 going to work posthaste on addressing -- on analyzing this  
7 and creating a staff report for the Board's consideration.

8           CHIEF ENGINEER BRADLEY: Depends on what you want  
9 done first. I outlined the last time there's still  
10 Sacramento River --

11          PRESIDENT CARTER: We'll work out the priorities  
12 with Mr. Punia.

13          We really need to move on.

14          CHIEF ENGINEER BRADLEY: Okay. Fine.

15          PRESIDENT CARTER: Thank you.

16          We are -- just as a process check now, it's 5  
17 after 5. We have six more items on our agenda. We're  
18 going to address the San Joaquin River Restoration  
19 Settlement Agreement.

20          Question for the Board. On AB 142, Tentative  
21 Expenditure Plan and Future Flood Control Activities. Do  
22 we need to hear that tonight or can we postpone that till  
23 the next meeting?

24          Are there -- maybe, Mr. Mayer, if you can let us  
25 know, are there --

1 DIVISION OF FLOOD MANAGEMENT ACTING CHIEF MAYER:

2 There's no urgency here. It was at the Board's  
3 request. So I'm fine --

4 PRESIDENT CARTER: Okay. I'm trying to get out  
5 of here at a reasonable time.

6 BOARD MEMBER BURROUGHS: I move that we postpone  
7 it till next month.

8 PRESIDENT CARTER: Are there any vehement  
9 objections to that?

10 VICE PRESIDENT HODGKINS: No.

11 PRESIDENT CARTER: Okay. So, Mr. Mayer, we're  
12 going to move Item 15 to next month's agenda.

13 And Mr. Punia said he's going to be brief.

14 What I would suggest is on the Future Agenda  
15 we -- you all have it in your Board packet -- you submit  
16 your comments and whatnot to Mr. Punia, and he will pull  
17 those together and the Executive Committee will go ahead  
18 and review the future agenda for November.

19 Lori, did you have something?

20 STAFF ASSISTANT BUFORD: No. Ms. Landis is here  
21 in the audience. We need to give her a presentation on  
22 16.

23 PRESIDENT CARTER: And we will get to that.

24 Okay. So San Joaquin River Restoration  
25 Settlement Agreement.

1 Ms. Landis.

2 SAN JOAQUIN DISTRICT CHIEF LANDIS: Thank you.

3 Paula Landis, Department of Water Resources. I admire  
4 your stamina.

5 How did I get to my presentation.

6 (Thereupon an overhead presentation was  
7 Presented as follows.)

8 SAN JOAQUIN DISTRICT CHIEF LANDIS: I believe you  
9 all have handouts. I'm going to try and keep this to 15  
10 minutes. So some of the slides I'll skip, unless you have  
11 specific questions on them.

12 --o0o--

13 SAN JOAQUIN DISTRICT CHIEF LANDIS: Okay. And  
14 I'll give you little bit of background. Hopefully most of  
15 you know it, so I'm going to go through it pretty quickly.

16 The San Joaquin River is the second major  
17 contributor of flows to the Sacramento-San Joaquin River  
18 Delta. It provides irrigation water for one million  
19 acres. And the anadromous fish which currently fall  
20 around this system are important for the commercial  
21 support fisheries.

22 --o0o--

23 SAN JOAQUIN DISTRICT CHIEF LANDIS: This is the  
24 river system.

25 I'm to the skip to the next slide because it

1 shows you the location in the State of California. But  
2 also the main stem of the San Joaquin River is here, which  
3 is what has been in question.

4 --o0o--

5 SAN JOAQUIN DISTRICT CHIEF LANDIS: In the  
6 forties Friant Dam went in. And the water in the San  
7 Joaquin River was diverted south of the Friant-Kern Canal,  
8 north of the Madera Canal.

9 Water remained in the river for about 30 miles  
10 below the dam to provide the riparian diverters with their  
11 allotment.

12 However, the users downstream of that point,  
13 which is known as Gravelly Ford, exchanged their water  
14 rights on the San Joaquin River for Delta water. So the  
15 Delta Mendota Canal was built to bring water back in to  
16 provide these irrigators in this area with water.

17 In doing that, they exchanged the snowmelt water  
18 for water that brings in salt to the valley and all the  
19 complications that go with that.

20 When this happened, reaches of the river were  
21 dried up. I don't mean to imply when the canal was built.  
22 I mean when the whole system was built. And this system  
23 is the Friant unit of the federal Central Valley Project.  
24 So the San Joaquin River goes dry in this reach here,  
25 between Gravelly Ford and Mendota Pool, and then down in

1 here below Sack Dam and before some of the other  
2 tributaries come back in.

3 That is what led to the lawsuit.

4 --o0o--

5 SAN JOAQUIN DISTRICT CHIEF LANDIS: This picture  
6 of the dam and some of the benefits of the dam: Flood  
7 protection, water supply, recreation.

8 And some of the impacts when the dam went in: It  
9 reduced the flows, changed the timings of flows, created a  
10 homogenous habitat, changed the variability of the flows  
11 that resulted in channel incision, and changed  
12 temperatures.

13 --o0o--

14 SAN JOAQUIN DISTRICT CHIEF LANDIS: Here's an  
15 example of flooding. This is the confluence of the Merced  
16 and San Joaquin River. This was even after the dam has  
17 been in place.

18 --o0o--

19 SAN JOAQUIN DISTRICT CHIEF LANDIS: This Wildwood  
20 Mobile Home Park in '98. That's at Highway 41 below  
21 Friant Dam.

22 --o0o--

23 SAN JOAQUIN DISTRICT CHIEF LANDIS: This -- and  
24 those two pictures were to point out some of benefits of  
25 the dam, that it does provide flood protection. It would



1 have been worse without the dam in place.

2           This slide shows you the area that is provided  
3 with water supply. That's the Friant Division Service  
4 Area. It's over a million acres.

5                               --o0o--

6           SAN JOAQUIN DISTRICT CHIEF LANDIS: And here is  
7 not a very pretty slide, but it gives you an idea of what  
8 the lake looks like. And there's extensive recreation  
9 that takes place at the lake.

10                              --o0o--

11           SAN JOAQUIN DISTRICT CHIEF LANDIS: So when the  
12 dam was built the Friant Unit Contractors entered into  
13 40-year contracts. Toward the end of 1980s those  
14 contracts came up for renewal. And the Natural Resources  
15 Defense Council, along with 15 partners, saw this as an  
16 opportunity to make these contracts subject to the  
17 Endangered Species Act and other environmental laws that  
18 had not been in place in the forties. And so they sued  
19 the Bureau of Reclamation.

20                              --o0o--

21           SAN JOAQUIN DISTRICT CHIEF LANDIS: Their  
22 argument was the contract renewals, which I just  
23 mentioned.

24           And at the same time they were basing their  
25 argument on Fish and Game Code 5937, which states: "The

1 owner of any dam shall allow sufficient water at all times  
2 to pass over, around or through the dam to keep in good  
3 condition any fish that may be planted or exist below the  
4 dam." That is the argument that they won their lawsuit  
5 on.

6           At the same time this lawsuit is going on, in  
7 1992 the Central Valley Project Improvement Act was  
8 passed, which also required that the federal facilities  
9 would have -- in addition to water supply and flood  
10 protection, they would have environmental purposes as a  
11 project purpose, environmental uses.

12           And in the CVPIA there was a requirement that the  
13 government -- federal government look at reasonable,  
14 prudent and feasible alternatives to restoring anadromous  
15 fish below Friant Dam. That study never got off the  
16 ground, there was such a local outcry against it. But the  
17 law remained on the books that the study needed to be  
18 done.

19           And along with the CVPIA, in order to pay for the  
20 restoration, all of the federal contractors paid a  
21 surcharge on the water they received on every acre-foot.

22           But the Friant users paid in addition to that  
23 surcharge another surcharge because they did not give up  
24 any water, whereas all the other federal contractors gave  
25 up water. So there's a large amount of money that the

1 Friant users are contributing to the Restoration Fund.  
2 And the bulk of that money has not been spent in a reach  
3 of river that would have benefited had water been released  
4 instead of collecting the money.

5 --o0o--

6 SAN JOAQUIN DISTRICT CHIEF LANDIS: So some of  
7 the milestones over this 18-year lawsuit -- these are just  
8 some key ones. There were many twists and turns  
9 throughout the years. But in the late nineties, 1999,  
10 NRDC and Friant entered into settlement talks, which broke  
11 down several times, they went back to court, back and  
12 forth. And then in September, just last month, they  
13 agreed on a settlement.

14 --o0o--

15 SAN JOAQUIN DISTRICT CHIEF LANDIS: And this is  
16 the basis of the settlement:

17 To restore and maintain fish populations in good  
18 condition in the main stem of the San Joaquin River below  
19 Friant Dam to the confluence of the Merced River,  
20 including naturally reproducing and self-sustaining  
21 populations of salmon and other fish, as well as to reduce  
22 or avoid adverse impacts to water supplies to the Friant  
23 Division long-term contractors that may result from the  
24 restoration flows by the year 2025.

25 --o0o--

1           SAN JOAQUIN DISTRICT CHIEF LANDIS: The state  
2 will be involved in this. At the time the settlement  
3 agreement was signed there was also a companion piece,  
4 which is a memorandum of understanding. These statements  
5 are out of the settlement agreement. In the settlement  
6 agreement it says that they are required to have the  
7 participation of state, they'll coordinate with the state,  
8 and we signed the MOU.

9                               --o0o--

10           SAN JOAQUIN DISTRICT CHIEF LANDIS: This is the  
11 essence of the MOU, but basically says the same things  
12 that were in the previous slide, that we will work  
13 together and do good things.

14                               --o0o--

15           SAN JOAQUIN DISTRICT CHIEF LANDIS: Here are the  
16 schedules. There's two main things that have to happen  
17 for restoration. There are flows and then there are the  
18 fish.

19           And the flows -- the interim flows are supposed  
20 to commence in three years from now, which is amazing to  
21 me because we have to do all the environmental compliance  
22 before that. And you know how that can complicate things.

23           And the fish, they have -- the Spring and Fall  
24 run are supposed to be reintroduced by 2012. And the full  
25 restoration flows by 2014.

1                               --o0o--

2               SAN JOAQUIN DISTRICT CHIEF LANDIS:  The sources  
3 of water.  Friant is going to be giving up an average of  
4 about 200 -- between 200 and 300,000 acre-feet a year.  
5 But as you saw from a previous slide where it explained  
6 what the goals of the settlement agreement are, one of  
7 those goals is to keep Friant not whole but to get them  
8 replacement water.  And they propose to get that water by  
9 purchases from willing sellers, transfers, exchanges,  
10 recirculation and recapture and reuse.  That's called the  
11 recovered water count.  That means the water that's  
12 released down the river for the fish, they propose to  
13 recapture it and reintroduce it into the system at various  
14 places so it's being used for in-stream purposes as well  
15 as other purposes.

16                               --o0o--

17               SAN JOAQUIN DISTRICT CHIEF LANDIS:  There's  
18 specific actions in the restoration -- I mean settlement  
19 agreement.  There's Phase 1 and Phase 2 actions.  I won't  
20 go into detail on those.

21                               --o0o--

22               SAN JOAQUIN DISTRICT CHIEF LANDIS:  But what --  
23 they basically fall into two categories:  Fish passage and  
24 channel modifications.

25                               --o0o--

1           SAN JOAQUIN DISTRICT CHIEF LANDIS: And it's a  
2 lot more complicated than just turning on the tap and  
3 putting water into the stream.

4           Here are some of the many issues that will need  
5 to be addressed. And I have slides for each of these.

6                               --o0o--

7           SAN JOAQUIN DISTRICT CHIEF LANDIS: But here's an  
8 example of low flow, which is Gravelly Ford. I think you  
9 should be familiar with that one, hopefully. If you're  
10 not, let me know if I'm assuming too much.

11                              --o0o--

12           SAN JOAQUIN DISTRICT CHIEF LANDIS: Subsidence.  
13 This is pretty amazing. Since 1925, there's been  
14 subsidence by as much as 30 feet. That changes completely  
15 the gradient of the river and reduces capacity and  
16 sediment transport, et cetera.

17                              --o0o--

18           SAN JOAQUIN DISTRICT CHIEF LANDIS: And this is  
19 one of the fish passage issues. This is the bifurcation  
20 structure where -- here's the San Joaquin River on the  
21 bottom part here, heading on down to Gravelly Ford and  
22 Mendota Pool. And this is where the Chowchilla Bypass  
23 takes off.

24                              --o0o--

25           SAN JOAQUIN DISTRICT CHIEF LANDIS: And the

1 levees. This is just from this last spring. And there's  
2 going to be a lot of levee work as well as levee setbacks,  
3 et cetera, that's detailed quite -- detailed a little bit,  
4 if there is such a thing, in the settlement agreement.

5 --o0o--

6 SAN JOAQUIN DISTRICT CHIEF LANDIS: Fish passage.  
7 Here's Mendota Dam. The proposal in the settlement  
8 agreement is to actually route the fish around Mendota  
9 Dam, create a bypass channel there for the fish  
10 specifically.

11 But there are other dams, such as Sack Dam.

12 --o0o--

13 SAN JOAQUIN DISTRICT CHIEF LANDIS: Aggregate  
14 mining. This is in Fresno. You can see all the abandoned  
15 gravel pits. The old river channel is down here. But the  
16 river flows through these pits.

17 Frequently the pits provide habitat for  
18 predators. The out-migrating smolts need a flow. They  
19 don't have a direction. So when they hit these warm,  
20 slow-moving waters, they kind of hang out there and get  
21 preyed on by the bass that prefer this type of habitat.  
22 And also the birds.

23 --o0o--

24 SAN JOAQUIN DISTRICT CHIEF LANDIS: Encroachment.  
25 You can see how the ag land and the cities have encroached

1 right up to the water's edge practically, making it  
2 difficult to have a nice meander belt to design a  
3 self-sustaining system.

4 --o0o--

5 SAN JOAQUIN DISTRICT CHIEF LANDIS: This is  
6 another example of land use. I just wanted to show you  
7 the difference between 1937 and in the late nineties.  
8 I'll just point out a couple of things to watch between  
9 these two slides.

10 The brown is ag land. You see there's no red on  
11 there and no black to speak of or no light blue.

12 When we come down to 1993, there's much less of  
13 the brown. The blue is open water. Those are abandoned  
14 aggregate -- gravel pits. This is Highway 41 down the  
15 middle of the slide. The red is aggregate mining that  
16 exists. And the black is residential.

17 --o0o--

18 SAN JOAQUIN DISTRICT CHIEF LANDIS: Exotic  
19 species. There are many of them. That will complicate  
20 restoring a native riparian habitat.

21 --o0o--

22 SAN JOAQUIN DISTRICT CHIEF LANDIS: Water quality  
23 issues. This is the confluence of the San Joaquin and the  
24 Merced. This is the San Joaquin coming here, which is  
25 primarily agricultural drainage. And here you see the



1 fresher Merced River water coming in.

2 --o0o--

3 SAN JOAQUIN DISTRICT CHIEF LANDIS: And other  
4 issues such as this, type of water quality problems.

5 --o0o--

6 SAN JOAQUIN DISTRICT CHIEF LANDIS: And funding.  
7 What is it going to cost? There's a lot of numbers out  
8 there, ranging from 2 million to 800 million, and a lot of  
9 numbers in between. I think it's going to be on the  
10 higher end. I think that the numbers are, even the higher  
11 end, are leaving out some issues, because they're  
12 addressing only the actions that are in the settlement  
13 agreement as opposed to, for example, impacts that might  
14 happen downstream of the confluence with the Merced.

15 --o0o--

16 SAN JOAQUIN DISTRICT CHIEF LANDIS: And the  
17 funding will come from these sources:

18 The CVPIA surcharge, which I mentioned earlier in  
19 my presentation.

20 Also the capital. Any of the repayments that the  
21 Friant unit uses that are not already obligated are going  
22 to go to this effort.

23 There's federal appropriations planned and state  
24 contributions.

25 --o0o--

1           SAN JOAQUIN DISTRICT CHIEF LANDIS: The federal  
2 act is called the San Joaquin Restoration Settlement Act  
3 offered by Feinstein. And it authorizes an appropriation  
4 right now of 250 million, and it has other possibilities  
5 in it.

6           The state. Our effort is pretty much going to be  
7 dependent on what happens at the elections in November.  
8 In Proposition 84 there's a line item that specifically  
9 identifies 100 million for the San Joaquin River  
10 restoration, cooperation on the settlement agreement.

11                               --o0o--

12           SAN JOAQUIN DISTRICT CHIEF LANDIS: And that's  
13 very quick. But I know your brains must be getting tired  
14 by now.

15           I'm happy to answer any questions.

16           PRESIDENT CARTER: Thank you.

17           Any questions for Ms. Landis?

18           SECRETARY DOHERTY: Was that Wildwood -- is that  
19 in the bottom of the river -- the San Joaquin River where  
20 Highway 41 crosses north?

21           SAN JOAQUIN DISTRICT CHIEF LANDIS: Yes, it is.  
22 It's on the Madera side, right at Highway 41 --

23           SECRETARY DOHERTY: Well, they built right on the  
24 bottom of the river.

25           SAN JOAQUIN DISTRICT CHIEF LANDIS: And after

1 that when you saw the water was up to the east, they  
2 rebuilt.

3 VICE PRESIDENT HODGKINS: Right on the bottom of  
4 the river.

5 SAN JOAQUIN DISTRICT CHIEF LANDIS: Uh-huh. They  
6 pulled out the old trailer and put in a new one.

7 Anything else?

8 VICE PRESIDENT HODGKINS: Is there a public  
9 process that's going to be involved in figuring out what  
10 this is? And how do you find out about that if --

11 SAN JOAQUIN DISTRICT CHIEF LANDIS: That's a very  
12 good question, and it's one that many people have asked  
13 and have a lot of concern about.

14 The third parties that may be impacted by this  
15 effort were not part of the settlement. And now they have  
16 concerns about what that will mean for them, particularly  
17 the introduction of spring-run species that's been  
18 extirpated from the system. And they want the safe  
19 harbors you've heard other people talk about today.

20 The Merced, Tuolumne, Stanislaus, their  
21 operations are completely based on needs of the fall-run  
22 Chinook. Now, if a new species comes in, how will that  
23 affect their ability to protect the fall run, et cetera?

24 So there's two -- that's kind of some background  
25 to the answer to your question, which is there will

1 probably have to be two efforts. One will be for the  
2 third parties, because they don't want to just be  
3 informed, they don't want to just be part of the public.  
4 They have greater items at stake. So we'll have a process  
5 for them.

6 And then there will be a public process, probably  
7 similar to what was done for the upper San Joaquin River  
8 Basin storage investigation, which was periodic public  
9 meetings, getting input, letting them know what we're  
10 doing, where we're going.

11 BOARD MEMBER BURROUGHS: I have a question.

12 SAN JOAQUIN DISTRICT CHIEF LANDIS: Yes.

13 BOARD MEMBER BURROUGHS: For the third parties,  
14 does that include the Rec Board? Will the Rec Board be  
15 included in as a third party?

16 SAN JOAQUIN DISTRICT CHIEF LANDIS: You are  
17 certainly welcome. And that's a good point. I haven't  
18 seen the Rec Board specifically invited as a third party.  
19 But, yes.

20 BOARD MEMBER BURROUGHS: What do we need to do to  
21 try to be included?

22 SAN JOAQUIN DISTRICT CHIEF LANDIS: Just telling  
23 me is fine. I'll make sure it happens.

24 BOARD MEMBER BURROUGHS: Thank you.

25 SAN JOAQUIN DISTRICT CHIEF LANDIS: Um-hmm.

1           PRESIDENT CARTER: Any other questions of Ms.

2 Landis?

3           We've got a couple people from the public who  
4 would like to address the Board on this item.

5           Mr. Hill.

6           SAN JOAQUIN DISTRICT CHIEF LANDIS: All right.

7 Thank you.

8           Thank you.

9           MR. HILL: Good afternoon or good evening,  
10 whichever way you would like to address it.

11           My name's Reggie. I'm the Secretary-Manager of  
12 the Lower San Joaquin Levee District. I'd like to thank  
13 President Carter and members of Board and Secretary -- I  
14 mean General Manager Jay Punia for this opportunity.

15           What I'd like to do is -- the Levee District  
16 Board is the third party involved in this settlement  
17 negotiation -- well, there's no negotiations, just a  
18 settlement agreement.

19           What I'd like to do if I could is I would like to  
20 submit a written statement to be incorporated into your  
21 Board minutes. But I will save you the pain of me reading  
22 it.

23           So, anyway, if -- Lori, I can give you the  
24 original.

25           Here's the original. If you would pass that to

1 the other Board members.

2 Basically what I'd like to do is basically just  
3 do a little summarization. I'll try and keep it very  
4 quick and brief here.

5 Again, you all -- hopefully you still remember  
6 the Lower San Joaquin Levee District. I appreciated your  
7 time and efforts when you were down in our neighborhood.

8 Basically what I'd like to do, if I could, Dave,  
9 is use this overhead.

10 As you're aware, the levee district is  
11 responsible for maintaining and operating a flood control  
12 project that is owned by the State of California.

13 (Thereupon an overhead presentation was  
14 Presented as follows.)

15 MR. HILL: This map is in the back, the very last  
16 page of the pamphlet that you received. And basically  
17 what Paula had laid out initially was the fact that the  
18 reaches -- the San Joaquin River is broken into five  
19 reaches. And basically what you're looking at is: Reach  
20 1 is from Friant Dam down to Gravelly Ford. And then they  
21 the Reaches 1A and 1B. And then from Reach 2 all the way  
22 to Reach 5 incorporates the flood control project  
23 activities of the Lower San Joaquin Levee District. And  
24 that's why we're here to voice our concern.

25 Basically our sole business in operating and

1 maintaining this project is public safety and the  
2 protection of property out there. And that's our whole  
3 point of this. And what we did is we read the settlement  
4 agreement. We had some objections to the language. We  
5 asked for some changes in the language, which was denied,  
6 which basically asked for some consideration of flood  
7 protection in determining things that are going to be  
8 occurring during the settlement -- or the restoration of  
9 the river.

10           So basically what all that is is -- what I've  
11 written, the statement there, is more detailed on that.  
12 So basically what we're looking at is that you're looking  
13 at the river itself, which is the blue line, is all that's  
14 going to be addressed.

15           And then you get up to what is called reach 4B.  
16 And you'll notice there on the left, where Reach 4B, it  
17 travels about 30 some miles. Well, in the settlement  
18 agreement it stipulates that they will utilize that Reach  
19 4B to a certain extent, but it -- currently that channel  
20 is plugged and clogged. On paper it's got a capacity of  
21 1500. In actuality it's about 3 or 400.

22           So basically what their point is, there's phases  
23 of construction in the proposal. First, phase 1 is to try  
24 and open that channel up at least to a 500 cfs. And so  
25 when you're looking at the flows that are required for

1 fish restoration flows -- and that is totally based on  
2 hydrographs that are in the settlement agreement. There  
3 are basically six years of which they can classify the  
4 water years from the very dry to very wet. And basically  
5 what happens is you're going to be introducing water into  
6 the system that normally we wouldn't see at certain times.

7           So what has happened is it changes our  
8 perspective if -- when we have to go on flood watch -- we  
9 have to go on flood watch for fish flows. There's  
10 incorporated costs into that.

11           If fish flows are being introduced into the  
12 system and there are probably -- they are looking also at  
13 using the bypass system for fish restoration. If they  
14 can't utilize this Reach 4B to its fullest extent, then  
15 they're looking at utilizing the nine miles of the East  
16 Side Bypass and the full three and a half -- three and a  
17 quarter miles of the Mariposa Bypass for fish restoration,  
18 which changes the whole perspective of what that flood  
19 control project is intended to be.

20           And what it does is it also introduces endangered  
21 species in to our operation, which encourages -- which  
22 encourages also the in-growth of habitat necessary for  
23 fish restoration, which also adds costs to the district in  
24 trying to address those kind of issues.

25           So I mean I'm being real quick or real fast here.



1 A lot of that detail is in the paper that I gave you.

2 But, anyway, we have some serious issues with  
3 this. The district has not taken a position that we're  
4 objecting to restoring the river or the reintroduction of  
5 salmon. But we do have an objection to the manner in  
6 which they are utilizing the flood control project to  
7 obtain that purpose. And like I said, then they're  
8 diminishing the aspect of what the purpose of the project  
9 is, and that's where our objection is. And we're trying  
10 to get people's attention to try and get them to  
11 understand that.

12 That's real quick and sweet, I hope.

13 Have you got any questions?

14 PRESIDENT CARTER: Any questions for Mr. Hill?

15 BOARD MEMBER RIE: So how would you like the  
16 Board to help you convey that message other than your  
17 commenting here today?

18 MR. HILL: Well, this is strictly just an  
19 informational briefing at this point. There's no action  
20 item, my understanding, that the Board can take on this.  
21 Other than I'm -- we're just -- we filed a brief with the  
22 Court saying that we are in opposition to the settlement  
23 agreement in the manner in which it was presented, because  
24 of those reasons. And the reasons are more detailed than  
25 that, but that's what the brief is about.

1           So basically all we're doing is we're just  
2   educating that this is the issue here as far as this flood  
3   control project and the restoration plan for the San  
4   Joaquin River.

5           We just want to make sure that you understand  
6   what the district's position is. Because we operate and  
7   maintain that project through an O&M manual that was given  
8   to us by the Reclamation Board, so we operate it in that  
9   respect. So if there's any changes that are going to  
10  happen, it's going to have to come through this  
11  Reclamation Board and down through the district. And  
12  hopefully that's going to be a discussion that's going to  
13  entail a lot of input and backfeeding.

14           BOARD MEMBER RIE: And that would require 408,  
15  Scott?

16           STAFF COUNSEL MORGAN: I don't know -- I don't  
17  know how much of a change the proposal might require and  
18  whether the Corps can do the 408 or not. I mean this is a  
19  part of a federal project even though --

20           MR. HILL: It's been sent over to the federal  
21  system, yes.

22           STAFF COUNSEL MORGAN: Right. This was built in  
23  lieu of flowage easements.

24           MR. HILL: Correct.

25           STAFF COUNSEL MORGAN: The original plan was to

1 acquire flowage easements. And ultimately the cost of  
2 those became so great that it was deemed to be cheaper to  
3 build this bypass system.

4 MR. HILL: Correct.

5 STAFF COUNSEL MORGAN: And that was done on  
6 behalf of the federal government -- the federal  
7 government's plan had been by flowage easements and  
8 accepted this as a substitute for that. And then it  
9 therefore becomes a part of a federal project. But the  
10 O&M manual is -- the Reclamation Board's O&M manual --  
11 well, I don't know if it's unique, but it's unusual. It's  
12 a Corps of Engineers O&M manual. This one is a --

13 MR. HILL: Well, it's an O&M manual based on  
14 Corps --

15 STAFF COUNSEL MORGAN: It's based on Corps  
16 principles, but it says Rec Board --

17 MR. HILL: It says Reclamation Board on it, yes,  
18 it does.

19 STAFF COUNSEL MORGAN: Yeah. And the Board is  
20 going to have to amend that if there's any amendment. And  
21 presumably the -- well, no presumably about it. The local  
22 agency -- that's an agreement with a local agency.  
23 They'll have to agree to change it as well.

24 MR. HILL: Also, and the associated costs that  
25 are going -- well, this shouldn't be borne by the

1 landowner in the district. If there's associated costs,  
2 they're above and beyond the normal operation and  
3 maintenance of the flood control project, there's got to  
4 be some other funding sources to supplement that.

5 PRESIDENT CARTER: Any other questions for Mr.  
6 Hill?

7 Recognizing that this will probably come back  
8 before the Board in the future.

9 SAN JOAQUIN DISTRICT CHIEF LANDIS: I'd like to  
10 make a comment on Reach 4B, if I may.

11 PRESIDENT CARTER: Yes.

12 SAN JOAQUIN DISTRICT CHIEF LANDIS: Paula Landis,  
13 DWR.

14 Reggie is correct. There is a lot of problems  
15 that need to be looked at in how that stretch of passage  
16 is handled, whether it's through the old river channel,  
17 through the bypass or through a combination of the above.

18 But I wanted to read a statement out of the  
19 federal legislation just to let you know how serious this  
20 particular action is being looked at. There are two pages  
21 in this legislation that address that, but I will just  
22 read one.

23 It says, "The Secretary" -- meaning the Secretary  
24 of the Department of Interior -- "shall to the extent  
25 feasible make a determination prior to undertaking any

1 substantial construction work to increase capacity in  
2 Reach 4B..." And there's a more detail on that as well.

3 So Reggie's not the only one that has concerns  
4 there.

5 MR. HILL: Correct. And then also, like I said,  
6 that's landowners in 4B. But if they start using the  
7 bypass for fish restoration, that is not a fee title that  
8 the state owns. That's an easement only. So therefore  
9 you're going to have to go back to these landowners that  
10 you acquired the easement from 40 years ago and revisit  
11 and say, "We're now requiring an easement for the  
12 introduction of an endanger species on your private  
13 property," and everything else that's associated with  
14 that. So it's either a new easement or a fee title issue.

15 BOARD MEMBER BURROUGHS: In regards to the  
16 settlement, was there anyone at the table that brought  
17 that information to the discussion?

18 MR. HILL: No. What Paula had alluded to, there  
19 was a confidentiality issue. So the only people who were  
20 in the settlement discussion agreements were the principal  
21 parties to the litigation, which was NRDC, the  
22 environmental interests; the Bureau; and the Friant water  
23 districts.

24 We never got a chance to view the document until  
25 it became available after we signed a confidentiality

1 agreement. And then we couldn't talk to our landowners  
2 until it became public when the judge opened it and when  
3 it signed back in September, last month.

4           So basically those -- there was a lot of people  
5 who were left out who are now coming forward and saying  
6 they have some really problems with this. And it's not an  
7 easy as done deal. I mean, you know, river restoration is  
8 river restoration. But there are other issues that need  
9 to be explored and visited and feedback. So that the  
10 public forum is the only way it's going to happen.

11           PRESIDENT CARTER: Thank you, Mr. Hill.

12           Mr. Roduner.

13           MR. HILL: He's the Chairman of our Board.

14           MR. RODUNER: Well, thank you, Board. And I can  
15 be very brief.

16           First of all, I don't think we'll ever get the  
17 river restored, because it's going to cost so much more  
18 than what anybody is even anticipating.

19           I expect the first fish that would ever be up to  
20 Friant would be over a million dollars. And I'm  
21 not -- and I don't -- and I'm not kidding. Because there  
22 is so much that they got to do.

23           And if it does get built, there's no way that the  
24 levee district would ever be able to maintain it for flood  
25 control. It'd be -- we will have to have another source

1 of income.

2 Well, that's about all.

3 Thank you.

4 PRESIDENT CARTER: Thank you.

5 Any questions for Mr. Roduner?

6 Very good. Thank you very much.

7 All right. What I'd like to do is -- are there  
8 any -- we're on to Item 17 now -- any comments or task  
9 leader reports that need to be passed along to the other  
10 Board members at this time?

11 BOARD MEMBER BURROUGHS: Well, just one under  
12 task leader report under the -- for me for the lower San  
13 Joaquin. Just that I'd like to have this put on the  
14 agenda, and also to have the staff look at the legal  
15 ramifications to the Board on this new legal ruling.

16 PRESIDENT CARTER: Okay. So you want to have the  
17 restoration settlement agreement put on the agenda again?

18 BOARD MEMBER BURROUGHS: Settlement agreement,  
19 yes.

20 PRESIDENT CARTER: All right.

21 Anything else?

22 SECRETARY DOHERTY: Just really briefly.

23 We've been talking about global change. And I  
24 did hear a speaker on global change the other day. He  
25 said that there would be 70 to 80 percent less snowpack,

1 one to two-foot rise in sea level, death will increase,  
2 agriculture will be impacted, so will electricity and wild  
3 fires. We have to reduce emissions. Number one is oil  
4 and gas, their refineries, electric production, landfills  
5 and cement plants.

6           And you can -- if I understood them correctly --  
7 go to the East Coast and they're trading now on emissions.  
8 I can go buy some credits for emissions and get by that  
9 way. Go to a country that is not emitting anything and  
10 buy their emissions -- their lack of emissions for credit.  
11 And I thought that was all very interesting, since global  
12 warming has just recently come to our attention.

13           PRESIDENT CARTER: Okay. Anything else?

14           All right. Report on the Activities of the  
15 General Manager.

16           GENERAL MANAGER PUNIA: I think as you have heard  
17 from the staff, staff was extremely with the NRDC lawsuits  
18 and that's why some of your staff reports were not  
19 prepared on time or they were not prepared at all.

20           Board Member Teri Rie indicated that she won't be  
21 available for the November 17th meeting. And there was a  
22 proposal from President Ben Carter to move the meeting to  
23 another date.

24           We have discussed that at staff level. And staff  
25 is recommending against moving the meeting from November



1 17th. The reason is that it may be difficult to acquire  
2 the auditorium. And the applicants have scheduled their  
3 items based upon the meeting on November 17. Then they  
4 may not be able to finish some of the item if they want to  
5 bring in front of the Board. Plus the next week is the  
6 thanksgiving holiday, so we may not be able to push one  
7 week ahead.

8           So I'm proposing to the Board to stick with the  
9 meeting date as November 17th as originally planned.

10           SECRETARY DOHERTY: What do we need as far as a  
11 quorum goes? Just the four that will be here?

12           GENERAL MANAGER PUNIA: That's --

13           SECRETARY DOHERTY: Nobody can get sick.

14           STAFF COUNSEL MORGAN: A Board meeting can occur  
15 with, you know -- three people is a meeting of the Board.  
16 You need four people to make any decisions. And they all  
17 have to agree one way or another.

18           BOARD MEMBER RIE: So, Scott, if somebody gets a  
19 flat tire on the way here, the Board can go ahead and meet  
20 with just three?

21           STAFF COUNSEL MORGAN: You could have three  
22 people, basically have informational briefings. But  
23 that's what -- that would be limited to that.

24           BOARD MEMBER RIE: I want to apologize for doing  
25 this to you guys, but I'm going to be in Mexico that day

1 on vacation.

2 SECRETARY DOHERTY: Good for you.

3 BOARD MEMBER RIE: Sorry.

4 STAFF COUNSEL MORGAN: A teleconference.

5 SECRETARY DOHERTY: Don't be sorry. Be happy.

6 BOARD MEMBER RIE: I just feel sorry for you  
7 guys.

8 GENERAL MANAGER PUNIA: So the decision is we  
9 will stick with the November 17th meeting?

10 PRESIDENT CARTER: I think it could work in favor  
11 or against any applicants that -- I mean if they require  
12 action, then you need an entire consensus of the four  
13 members present, if there are four members present. And  
14 so it could be good or bad for the applicants.

15 The other options we discussed was to move it two  
16 weeks later or one week earlier. So it would be November  
17 11th, I think it is, or December something.

18 So those are options. I mean it's really  
19 entirely the pleasure of the Board.

20 The meeting room, we can work around. We've had  
21 meetings at the JOC. It's probably easier to get that if  
22 this is not available. So I wouldn't let that -- that's  
23 not a show-stopper, in my opinion.

24 STAFF COUNSEL MORGAN: The week before is  
25 Veterans' Day. The week before, November 10th.

1           PRESIDENT CARTER: November 10th.

2           Is that a holiday?

3           STAFF COUNSEL MORGAN: Yes.

4           GENERAL MANAGER PUNIA: One of the applicants has  
5 expressed that they may not be able to finalize an EIR. I  
6 think there are some time limitations. Annalena Bronson  
7 has expressed a concern that the Mayhew project may not be  
8 ready if we move the meeting one week ahead.

9           PRESIDENT CARTER: The other option is December  
10 1.

11          BOARD MEMBER RIE: With regard to Mayhew, there's  
12 a good possibility they may not even be done by November  
13 17th. So, you know, I think if they released it four days  
14 before the Board meeting, that's something else that's  
15 going to be a problem. So that decision may be postponed  
16 anyway. I don't know how time sensitive their approval  
17 is, if they can wait until December. But that's just  
18 something to consider.

19          Does anybody remember when they were going to  
20 release that? Or were they not going to be sure about it?

21          They weren't sure?

22          GENERAL MANAGER PUNIA: They're planning to bring  
23 the final EIR for Board certification at the November 17th  
24 meeting. And I think there is some time constraints of --  
25 I think the comment I heard from Annalena was if we move

1 ahead, they may not be able to meet that deadline.

2 PRESIDENT CARTER: So they've got to get the EIR  
3 to the Board well in advance of November 17th. Is that  
4 doable?

5 GENERAL MANAGER PUNIA: They're hoping that they  
6 will -- they have already provided a draft information at  
7 today's meeting. And they're hoping that they will bring  
8 the final EIR at the November 17th meeting for the Board  
9 certification to keep the process going.

10 PRESIDENT CARTER: But they've got to have the  
11 final EIR in our hands well before the November 17th  
12 meeting so that we can -- so they have a chance to review  
13 it.

14 GENERAL MANAGER PUNIA: Maybe Steve or Dan can  
15 add information.

16 CHIEF ENGINEER BRADLEY: What Tim said today was  
17 the draft you have essentially is the final. They just  
18 have to wait for it to be a finalized -- approve finalized.

19 So you have what you need to review. If there's  
20 any changes --

21 STAFF COUNSEL MORGAN: No, no, no. They are  
22 going to review the final EIR. And they have to wait till  
23 they get the final EIR.

24 They can read this. And to the extent that it's  
25 duplicative, they don't have to read it twice. But you

1 review the final EIR, you know, for approval, not the  
2 drafts.

3 ASSISTANT GENERAL MANAGER FUA: They have agreed  
4 to provide the Board the complete package three weeks  
5 before the November 17th Board meeting.

6 If we move it back a week, that's the difficulty  
7 there. They might not be able to give you the package  
8 three weeks in advance.

9 BOARD MEMBER RIE: Well, three weeks before  
10 November 17th is October 27th?

11 PRESIDENT CARTER: Next week.

12 SECRETARY DOHERTY: It's going to be hard anyway.

13 ASSISTANT GENERAL MANAGER FUA: That's what they  
14 said.

15 BOARD MEMBER RIE: I would suggest that maybe,  
16 Jay, you talk to Annalena and see what's realistic. And  
17 maybe it's better to just postpone that item to December.

18 GENERAL MANAGER PUNIA: I think because -- I  
19 don't -- maybe Rod can answer this question. I don't know  
20 what are the critical fact is. But I think Annalena and  
21 Tim Kerr's recommendation was that they want to have some  
22 action on making it arranged in the next Board meeting.  
23 Otherwise it can delay the construction.

24 ASSISTANT GENERAL MANAGER FUA: Can we do it on  
25 the Monday after that Friday, like November 20th?

1           Are you going to be back, Teri?

2           BOARD MEMBER RIE: No, I won't be back on  
3 November 20th.

4           SECRETARY DOHERTY: Just leave it on the 17th.  
5 It's a complication to change.

6           PRESIDENT CARTER: So we'll stay with November 17  
7 with the situation.

8           GENERAL MANAGER PUNIA: Thank you.

9           Quick update. We have completed an interview  
10 process for replacement of Lori Buford. And we will -- we  
11 have top three candidates. And we checking the references  
12 and the personnel files. My hope is that we'll make a  
13 decision by next week.

14           Lori Buford's going-away luncheon we are planning  
15 at the next Board meeting. We'll have a going-away  
16 luncheon in Room 133. And we will bring some food and  
17 we'll be able to say farewell to Lori.

18           Meeting with Senator Dianne Feinstein, Rec Board  
19 staff was invited. And Butch Hodgkins represented the  
20 Board. Maybe, Butch, you can brief quickly what happened  
21 at that meeting.

22           VICE PRESIDENT HODGKINS: Yeah. It was a very  
23 interesting meeting. The Senator was there.

24           My memory -- representative from Solano County --  
25 I can't remember the name -- was there as well.

1           Who?

2           Yes, Representative Tauscher -- Congressman  
3 Tauscher was there. Mayor from the City of Sacramento,  
4 the Colonel, DWR staff from the top down, and the Bureau  
5 of Reclamation.

6           And I think the really interesting part was the  
7 Senator and Congressman Tauscher were extremely focused in  
8 understanding what it is that they need to deliver in the  
9 way of federal match for the projects that we're trying to  
10 move forward. Very engaged, trying to be sure they  
11 understood exactly what was required. And I think  
12 that's -- that's a great sign, when they're engaged, when  
13 they're really paying attention and trying to be sure they  
14 understand, that that means they're doing everything they  
15 can to help us in Sacramento. So it was a good meeting.

16          GENERAL MANAGER PUNIA: Okay. As discussed  
17 previously, staff is planning to work with DWR and U.S.  
18 Army Corps of Engineers to develop some kind of policy on  
19 levee raise, hydraulic mitigation and hydraulic impact  
20 analysis.

21          We are working with the DWR to line up some  
22 funding so that we can hire a consultant who will  
23 facilitate this process so that we can bring this draft  
24 guideline or policy for the Board consideration as soon as  
25 possible. That's a top priority assignment in my

1 priorities, and we will be working with DWR to bring  
2 something to you early next year.

3 Additional staff. We have put a budget change  
4 proposal requesting one more engineer and one more  
5 administrative staff. But in the meantime, we are  
6 requesting Rod and Les Harder to provide some additional  
7 staff in the meantime so that we can widen this bottleneck  
8 of permit processing so that we can expedite reviewing and  
9 approving these permits.

10 One more item is -- we have heard from Lisa Kirk  
11 regarding proposed Delta Coves Development. And the staff  
12 has checked on this item. And previously about -- Dan,  
13 about 10 or 15 years this item was discussed and the  
14 conclusion was there are no potential impact on the  
15 federal flood control project.

16 ASSISTANT GENERAL MANAGER FUA: That was in 1977.

17 GENERAL MANAGER PUNIA: 1977. Based upon Lisa  
18 Kirk's comments to the Board and based upon Board's  
19 recommendation to the staff, we have revisited this issue  
20 and Dan has done initial investigation. And, again, the  
21 conclusions are that there are no potential impacts on the  
22 proposed -- on the federal flood control project from this  
23 proposed development in Bethel Island. And we will be  
24 conveying this to Ms. Kirk, conveying this message from  
25 the Board, that we have looked into this and there are no



1 potential impacts on the federal flood control project.

2           Maybe Dan can elaborate more on this if you need  
3 it.

4           ASSISTANT GENERAL MANAGER FUA: Well, essentially  
5 this is a development in Bethel Island. It's 491 homes,  
6 and it's going to be surrounded by water. And to get the  
7 water into this development, they will need to breach the  
8 levee. And I have pictures of the proposed development if  
9 you want. But it's in the computer.

10          PRESIDENT CARTER: Okay. I think in the  
11 interests of time we can -- maybe we ought to look at that  
12 next time.

13          GENERAL MANAGER PUNIA: And just one more  
14 comment. These are non-project levees. So these are not  
15 federal flood control projects. So the plan of  
16 reclamation they're trying to modify is a non-projects  
17 levee. And we looked at that this modification is not  
18 going to impact the federal flood control project.

19          PRESIDENT CARTER: If they're non-project levees  
20 and they're breaching levees, do they need Rec Board  
21 permits to do that?

22          ASSISTANT GENERAL MANAGER FUA: I believe, yes.  
23 But we haven't exercised that jurisdiction. And I think  
24 Steve can elaborate on that one.

25          CHIEF ENGINEER BRADLEY: If it was a

1 reclamation -- my understanding of what Scott explained to  
2 me, in the Water Code, the section under Reclamation  
3 Districts, they would need Board permission. But this is  
4 not a reclamation district. It's a municipal utility  
5 district, I believe.

6 ASSISTANT GENERAL MANAGER FUA: Municipal  
7 improvement district.

8 CHIEF ENGINEER BRADLEY: Yeah, MID. Sorry.

9 There's another one, which is Brannan-Andrus  
10 Levee Maintenance District, which is also not an RD. The  
11 rest of the levees in the Delta are RDs.

12 You can elaborate -- maybe Nancy can speak more  
13 on this.

14 ASSISTANT GENERAL MANAGER FUA: But it's within  
15 the jurisdiction of the Reclamation Board because it's in  
16 the Central Valley.

17 PRESIDENT CARTER: But approval is not required  
18 by the code?

19 GENERAL MANAGER PUNIA: That's correct. Had it  
20 been a rec district, then we are obligated to ask for the  
21 plan of reclamation. But it's not a reclamation district.  
22 It's a special district. So we are not required to ask  
23 then a plan of reclamation.

24 PRESIDENT CARTER: Anything else?

25 GENERAL MANAGER PUNIA: That concludes my report.

1           BOARD MEMBER RIE: On that note, I would  
2 recommend that you guys move forward and notify the  
3 residents of your findings. That would be my  
4 recommendation.

5           PRESIDENT CARTER: Okay.

6           GENERAL MANAGER PUNIA: Will do.

7           PRESIDENT CARTER: Very good.

8           If there are no objections from the members of  
9 the Board, if you would go ahead and submit your  
10 suggestions for the November 17th agenda directly to Mr.  
11 Fua -- I mean Mr. Punia, he'll pull those comments  
12 together and we'll formulate the agenda for the 17th.

13           And if there's nothing else, we're adjourned.

14           (Thereupon the The Reclamation Board open  
15 session meeting adjourned at 5:55 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand  
3 Reporter of the State of California, and Registered  
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the  
6 foregoing Reclamation Board open session meeting was  
7 reported in shorthand by me, James F. Peters, a Certified  
8 Shorthand Reporter of the State of California, and  
9 thereafter transcribed into typewriting.

10 I further certify that I am not of counsel or  
11 attorney for any of the parties to said meeting nor in any  
12 way interested in the outcome of said meeting.

13 IN WITNESS WHEREOF, I have hereunto set my hand  
14 this 2nd day of November, 2006.

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